Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

RICHARD A. TROST,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Seventh Circuit misconstrued this Court's holding in *U.S. v. Schmuck*[1], thereby functionally overruling this Court's landmark decision in *Parr v. U.S.*, which held that mailings made or caused to be made under the imperative command of duty imposed by state law are not criminal under 18 U.S.C. §1341, and has thereby created a conflict between the Seventh Circuit and the Third and Fifth Circuits with respect to the continuing validity of *Parr*?

II. Whether the Seventh Circuit has converted 18 U.S.C. § 666 into a general anti-corruption statute, which thereby encourages federal prosecution for embezzling funds, such as photocopy charges, from an office entity that receives no federal funds?

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[1] *U.S. v. Schmuck*, 489 U.S. 705, 109 S.Ct. 1443 (1989), was a 5-4 decision in which Justice Scalia dissented and was joined by Justices O'Connor, Brennan and Marshall.

LIST OF PARTIES

All parties to the proceedings in the United States Court of Appeals for the Seventh Circuit appear in the caption of this case.

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PETITION FOR WRIT OF CERTIORARI

Richard A. Trost petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Seventh Circuit reviewing the Judgment of Conviction of the United States District Court for the Southern District of Illinois, Docket No. 97-4204 (8/17/98), is reported at 152 F. 3d 75 and is reprinted in the appendix ("Pet. App.") at A-1. The opinions of the United States District Court for the Southern District of Illinois in this case are unreported. They are reprinted in the appendix hereto.

JURISDICTION

The Seventh Circuit issued its decision and its mandate on August 17, 1998. This Court has jurisdiction under 28 U.S.C. § 1254(1), 28 U.S.C. § 1651, 28 U.S.C. § 2106 and Rule 10 of the Rules of the Supreme Court of the United States.[2]

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 666. Theft or bribery concerning programs receiving Federal funds.

> (a) Whoever, if the circumstances described in subsection (b) of this section exists—
>
> > (1) being an agent of an organization, of a State, local, or Indian tribal government, or any agency thereof—
> >
> > > (A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts

---

[2] The Court of Appeals had jurisdiction to review the Judgment of Conviction pursuant to 28 U.S.C. § 1291. The District Court's jurisdiction arose from Mr. Trost's indictment under 18 U.S.C. §§ 666, 1341 and 1956.

to the use of any person other than the rightful owner or intentionally misapplies, property that—

(i) is valued at $5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstances referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) As used in this section—

(1) the term "agent" means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative;

(2) the term "government agency" means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established and subject to control, by a government or governments for the execution of a governmental or intergovernmental program;

(3) the term "local" means of or pertaining to a political subdivision within a State;

(4) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) the term "in any one-year period" means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.

18 U.S.C. § 1341. Frauds and swindles.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any

counterfeit or spurious coin,obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

Ill. Const. art. VII, §4(c).

Offices other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance.

Ill. Const. art. VII, § 4(d).

County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance.

10 ILCS 5/1-3. Definitions.

As used in this Act, unless the context otherwise requires:

* * *

8. "Election authority" means a county clerk or a Board of Election Commissioners.

* * *

55 ILCS 5/3-2003.2.

Internal operations of office. The county clerk shall have the right to control the internal operations of his office; to procure necessary equipment, materials and services to perform the duties of his office.

55 ILCS 5/3-2013.

General duties of clerk. Subject to the provisions of "The Local Records Act", the duties of the county clerk shall be—

* * *

6th. To give any person requiring the same, and paying the lawful fees therefor, a copy of any record, paper or account in his office.

* * *

55 ILCS 5/3-5005.2.

Internal operations of office. The recorder shall have the right to control the internal operations of his office; to procure necessary equipment, materials and services to perform the duties of his office.

* * *

55 ILCS 5/4-1001.

Counties classified. For the purpose of fixing the fees and compensation of county and township officers in this State, the several counties therein are hereby divided into 3 classes, according to population as ascertained by the most recent Federal Census, which classes shall be known as the first, second and third, as follows:

> Counties containing a population of not exceeding 25,000 inhabitants shall be known as counties of the first class.
>
> Counties containing a population over 25,000 and not exceeding 1,000,000 shall be known as counties of the second class.
>
> Counties containing a population exceeding 1,000,000 shall be known as counties of the third class.
>
> The fees and compensation of the several officers hereinafter named, shall be as provided by law in the respective classes of the counties to which they belong.

55 ILCS 5/4-4001.

> County Clerks; counties of the first or second class. The fees of the county clerk in counties of the first and second class, except when increased by county ordinance pursuant to the provisions of this Section, shall be:
>
> > For each official copy of any process, file, record or other instrument of and pertaining to his office, 50¢ for each 100 words, and $1 additional for certifying and sealing the same.
>
> * * *

55 ILCS 5/4-6001(d).

> In addition to but separate and apart from the compensation provided in this Section, the county clerk of each county that does not have a county board of election commissioners . . . shall receive an award of $3,500 per annum for the additional duties required of such officer by the consolidation of elections law.

55 ILCS 5/4-13001.

> Penalty for violations. Any county officer herein above named, failing or refusing to pay over to the county trea-

surer the fees of the office, as provided in this Article, or who knowingly demands or receives other or greater fees than those provided by law, shall be deemed guilty of a Class A misdemeanor.

STATEMENT OF THE CASE

On December 19, 1995, Petitioner Richard A. Trost was indicted on five counts of mail fraud (18 U.S.C. § 1341), six counts of money laundering (18 U.S.C. § 1956), five counts of embezzlement (18 U.S.C. § 666) and one count of criminal forfeiture (18 U.S.C. § 982). Following a bench trial before Judge William D. Stiehl, Mr. Trost was acquitted of one count of embezzlement and convicted on the remainder of the counts. The following facts are relevant to the issues presented for review:

Background. Mr. Trost was the Monroe County Clerk and Recorder of Deeds from 1966 until 1997. As part of his obligation as County Clerk, Mr. Trost oversaw an office that made photocopies for various entities. Also pursuant to his statutory duties, Mr. Trost caused bills to be placed in the U.S. Mail to those entities that had charged photocopies at his office. Billings were for legitimate photocopy expenses. Memorandum & Order filed August 20, 1997, Pet. App. A-58. As County Clerk, Mr. Trost was also the election official. Pursuant to his duties as such, he caused election certificates, *i.e.* vouchers, to be mailed to the State of Illinois after elections to generate payments for election judges. These procedures were the same procedures that are used in other Illinois counties.

Indictment. On December 19, 1995, Mr. Trost was indicted on five counts of mail fraud (18 U.S.C. § 1341), six counts of money laundering (18 U.S.C. § 1956), five counts of embezzlement (18 U.S.C. § 666) and one count of criminal forfeiture (18 U.S.C. § 982). Indictment, Pet. App. A-15 - 33. Counts 1-4 alleged that Mr. Trost committed mail fraud by mailing photocopy bills and then depositing the payments into a personal account (account

#120456). Indictment, Pet. App. A-15 - 20. Count 5 alleged similar conduct with respect to a payment from the State of Illinois for election judges. Indictment, Pet. App. A-20. Counts 6-10 alleged that Mr. Trost laundered the proceeds of his aforementioned embezzlement by writing checks to himself out of account #120456, depositing them into a joint account he shared with his wife, and then writing checks from the joint account as payment on a mortgage loan. Indictment, Pet. App. A-20 - 27. Count 11 was similar except that the payment complained of was made directly from account #120456. Indictment, Pet. App. A-27 - 28. The total amount of funds alleged to be laundered in Counts 6-11 was $23,000 of which $22,000 was used to make mortgage payments. Indictment, Pet. App. A-20 - 28. Counts 12-16 alleged that Mr. Trost embezzled more than $5,000 per year from 1991 to 1995 from his office, and that Monroe County, Illinois, received federally-funded benefits exceeding $10,000 during the same years. Indictment, Pet. App. A-28 - 30. Finally, Count 17 sought a criminal forfeiture based on the money laundering counts. Indictment, Pet. App. A-30 - 32.

Trial. The case was tried without a jury. Memorandum of Decision, Pet. App. A-34. The Government called several witnesses in an attempt to authenticate an estimated 1,300 exhibits and also produced testimony relating to the use of mails. No witnesses testified that they received bills for copies they did not receive or that the charges were otherwise improper. Monroe County Treasurer Merrill Prange testified as to federal funds received by Monroe County, and also testified that all of said funds were used for the purpose for which they were received, or returned to the entity from which they were received. There was no evidence that the separate constitutionally-created office of the County Clerk of Monroe County received or had access to federal funds.

The only witnesses who testified that Mr. Trost embezzled funds were Monroe County Sheriff Dan Kelley and FBI Agent

Tyrone Forte. Kelley testified for several days about hundreds of checks that he concluded represented stolen Monroe County funds, and Forte testified as to totals derived from Kelley's testimony. Only four of the hundreds of drawers of the checks involved testified, and their testimony related to the authentication of exhibits and the use of mails. Financial entity witnesses testified only to the authentication of records.

At the close of the Government's evidence, Mr. Trost moved for judgment of acquittal. Mr. Trost did not present any evidence. Judgment of acquittal was granted on Count 12 and denied with respect to the remainder of the counts. Memorandum & Order filed August 20, 1997, Pet. App. A-53 - 68. Subsequently, forfeiture was ordered in the amount of $57,412, including $22,000 of Mr. Trost's interest in his residence. Memorandum & Order filed December 18, 1997, Pet. App. A-69 - 76. Mr. Trost was sentenced to 51 months of confinement and restitution was ordered in the amount of $100,123.71. Judgment, Pet. App. A-77 - 85. The Seventh Circuit affirmed the conviction on August 17, 1998. Pet. App. A-1 - 14.

REASONS FOR GRANTING THE WRIT

I. CIRCUITS ARE NOW SPLIT OVER *PARR.*

The use of mails charged in Counts 1-5 of the Indictment and shown by the evidence was not, "for the purpose of executing such scheme," in violation of 18 U.S.C. § 1341 as a matter of law because the alleged use of mails was part of Petitioner Richard A. Trost's duties as county clerk and recorder of deeds, and was performed in the ordinary course of business for such clerk and recorder. The case of *Parr v. U.S.*, 363 U.S. 370, 80 S. Ct. 1171 (1960), holds that such mailings do not constitute a use of the mails within the meaning of 18 U.S.C. § 1341. A pure issue of law, such as this, is reviewed on a plenary basis, *U.S. v. Boyd*, 55 F.3d 239, 242 (7th Cir. 1995), as is a district court's statutory interpretation. *U.S. v. Bates*, 96 F.3d 964, 967 (7th Cir. 1996).

A. The Charges

Count 1 charged Mr. Trost with the following conduct:

> 6) It was further a part of the scheme and artifice that the defendant utilized the United States mail in order to facilitate his thefts. This was accomplished by his control over certain billings and reports that were mailed to private individuals, companies, corporations, and financial institutions, as well as state offices and agencies. It was further part of the scheme and artifice that the defendant controlled the flow of United States mail into his office so that he would have access to checks that could be diverted into his personal accounts.
>
> 7) It was further a part of the scheme that the defendant would mail, or cause to be mailed, bills for copying services performed by the Monroe County Clerk's Office.
>
> 8) On many occasions, including those set out as Counts 1-4 of this Indictment, the parties receiving the bill would by way of the U.S. Postal Service mail their payments for the service to the Monroe County Clerk's Office.

9) That because of his control over the mail, the defendant was able to steal certain of these checks, including those set out in Counts 1-4, by placing them into his "Special Account", account 120456, an account he utilized for personal rather than County expenses.

* * *

11) That in furtherance of his scheme to defraud, the defendant mailed or caused to be mailed to the State Board of Elections invoices requesting the State to reimburse Monroe County for legitimate expenses incurred during County elections.

12) That upon receipt of these requests, the State Comptroller's Office would mail to the defendant, in his capacity as the County Election Authority, the funds that were due and owing to the County.

13) That the defendant, having control over the mail coming into his office, would steal certain of these checks, including the one set out in Count 5 of this Indictment, by placing them into account 120456, an account he utilized for personal rather than County expenses.

Indictment, Pet. App. A-16 - 17. Counts 2-5 of the Indictment realleged and incorporated by reference these allegations.

B. *Parr v. U.S.*

The Indictment charged and the district court found that Mr. Trost violated the mail fraud statute by mailing legitimate bills for legitimate fees and charges and then converting some of the checks received in the mail for payment of those bills. However, under *Parr v. U.S.*, 363 U.S. 370, 80 S. Ct. 1171 (1960), such use of the mails does not constitute a use of the mails within the meaning of 18 U.S.C. § 1341.

The factual setting in *Parr* was virtually identical to this case. In *Parr*, the defendants were school board members accused of converting real estate tax payments received in the mail. The

indictment charged mail fraud and conspiracy to commit mail fraud because of their use of the mails to mail out tax assessments and bills and the subsequent conversion of payments received in the mail. They were convicted and the conviction was affirmed by the Fifth Circuit. *Parr v. U.S.*, 265 F.2d 894 (1959). However, this Court reversed the convictions, stating:

> There can be no doubt that the indictment charged and the evidence tended strongly to show that petitioners devised and practiced a brazen scheme to defraud by misappropriating, converting and embezzling the District's moneys and property. Counsel for petitioners concede that this is so. But, as they correctly say, these were essentially state crimes and could become federal ones, under the mail fraud statute, only if the mails were used "for the purpose of executing such scheme." Hence, the question is whether the uses of the mails that were charged in the indictment and shown by the evidence properly may be said to have been "for the purpose of executing such scheme," in violation of §1341.

Parr v. U.S., 363 U.S. 370, 385, 80 S. Ct. 1171, 1180 (1960). Noting that the school board was required by law to issue tax statements and collect the taxes, and that there were no allegations that the tax bills themselves were illegal, *Id.* at 387, 80 S. Ct. at 1181, this Court held:

> [I]n light of the particular circumstances of this case, and especially of the facts (1) that the School Board was legally required to assess and collect taxes, (2) that the indictment did not charge nor the proofs show that the taxes assessed and collected were in excess of the District's needs or that they were "padded" or in any way unlawful, (3) that no such issue was submitted to, nor, hence, determined by, the jury, (4) that the Board was compelled to collect and receipt for the taxes by state law, which, in the circumstances here, compelled it to use and *cause* (here, principally by permitting) the use of the mails for those purposes, we must

> conclude that the legally compelled mailings, complained of in the first 16 counts of the indictment, were not shown to have been unlawful "step[s] in a plot," [citation omitted], "part[s] of the execution of the fraud," [citation omitted], "incident to an essential part of the scheme," [citation omitted], or to have been made "for the purpose of executing such scheme," within the meaning of §1341, for we think it cannot be said that mailings made or caused to be made under the imperative command of duty imposed by state law are criminal under the federal mail fraud statute, even though some of those who are required to do the mailing for the District plan to steal, when or after received, some indefinite part of its moneys.

Parr, at 390-391, 80 S. Ct. at 1183-1184. The same result was reached in the earlier case of *U. S. v. Beall*, 126 F. Supp. 363 (N.D. Cal. 1954) (§ 1341 does not apply to an individual who embezzles funds in his possession and control merely because funds were received in the mail in the usual course of duty).

C. Application of *Parr* to the Evidence.

Applying the rule from *Parr* to this case compels the same result.

1. Mailings were required.

Mr. Trost was legally required and lawfully entitled to assess and collect the fees described in the Indictment and to cause the mailings by which the same were assessed and collected. This position was conceded by the Government in the opening statement made by Assistant U.S. Attorney Ranley Killian, when he stated:

> Counts 1 through 4 charge that the defendant, **as part of his obligation as the Monroe County Clerk**, oversaw an office that made copies for various entities. The county had the copies made and sold and the money that was generated from the sales were supposed to go to the county. . . .

> **Because of his duties as the Monroe County Clerk**, the defendant caused the bills to be mailed in the U.S. Mail to the various entities that had charged copies at the Monroe County Clerk's office.
>
> * * *
>
> Count 5 is the same essential scheme, the difference being that **in addition to his other duties as Monroe County Clerk, he was also an election official and he caused election certificates to be mailed to the State** and the State to generate payments for elections judges. Those payments, as the evidence or the Court will hear, were supposed to go to Monroe County.

Transcript, Vol. I, pp. 5-6 (emphasis added).

Mr. Trost's duty to make the mailings for copy fees can be found in the Constitution and statutes of the State of Illinois. Article VII, § 4(d) of the Illinois Constitution states as follows: "County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance." 55 ILCS 5/4-4001authorizes a county clerk to charge fees for copies. 55 ILCS 5/3-2003.2 authorizes a county clerk to control the internal operations of their office, which would include the procedure for billing for copies and filling out and returning invoices relating to election judges. 55 ILCS 5/3-5005.2 gives a recorder of deeds the same right. Finally, 55 ILCS 5/3-2013 requires a county clerk, "To give any person requiring the same, and paying the lawful fees therefor, a copy of any record, paper or account in his office."

Mr. Trost's duty involving the use of the mails for payments in connection with elections is statutory. 55 ILCS 5/4-6001(d), states, in part, as follows: "In addition to but separate and apart from the compensation provided in this Section, the county clerk of each county that does not have a county board of election

commissioners . . . shall receive an award of $3,500 per annum for the additional duties required of such officer by the consolidation of elections law." Sheriff Kelley testified that Monroe County did not have a board of election commissioners. Transcript, Vol. V, p. 87. Also, "Election authority" is defined in 10 ILCS 5/1-3 as, "A county clerk or a Board of Election Commissioners."

Additional evidence that Mr. Trost was legally required to assess and collect the fees described in the Indictment and to cause mailings therefor was elicited from Government witness Eugene Schorb. Schorb testified that he does accounting work for 13 counties. Transcript, Vol. II, p. 56. In connection with copy fees, Schorb testified as follows:

Q. And in these counties that you represent, is there this normal photocopy charge that is made for photocopies?

A. Yes.

Q. And the county clerk, recorder, collects for those charges from various users, is that right?

A. Yes.

Q. And typically I guess for the big users, sends out a bill monthly for them. Is that the way it works?

A. Yes.

Q. Okay. And the procedure that was followed there in Monroe County so far as you can tell by your auditing is the same procedure that is used in the other counties, is that right?

A. Yes.

Transcript, Vol. II, pp. 57-58. As to payments by the State of Illinois in response to submission of State Board of Election vouchers, Schorb testified as follows:

Q. And in these counties, do you run across this invoice voucher form from time to time that is sent out by the State Board of Elections?

A. Yes.

Q. And every time there is an election the State Board of Elections sends out that type of document, is that correct?

A. Yes, sir.

Q. And I hand you what has been marked Government Exhibit 1248A. Is that the same sort of document?

A. Yes.

Q. So in all of these counties that you do the auditing for, you come across documents like Government Exhibit 1248A and 1250A in connection with the elections that are held in those counties?

A. Yes, sir.

Q. And if I understand it, the State Board of Elections sends these forms out to the county clerks each time there is an election, is that right?

A. Yes.

Q. And then the county clerk has to fill in the number of judges that were utilized in the election and send it back to the State Board, is that right?

A. Yes.

Q. And then thereafter the State Board causes the county clerk to be paid so much per election judge?

A. Yes.

Transcript, Vol. II, pp. 56-57.

Government witness Judy Mueller testified that her employer received photocopy bills from St. Clair, Clinton and Madison

Counties in addition to Monroe County. Transcript, Vol. I, pp. 91-92. Government witness Ann Hammer testified that her employer received photocopy bills from other counties and that they were required to pay for such copies made in other clerks' offices. Transcript, Vol. I, pp. 118-119. There was no evidence nor did the Government argue that Mr. Trost did not have a duty or the authority to charge for copies and election judges and to mail invoices and receive payment of these fees and charges.

2. The mailings were not fraudulent.

The Indictment did not charge, nor was there evidence that, the fees assessed and collected were excessive, "padded" or in any way unlawful. No witnesses testified that they received bills for copies they hadn't received or that the charges were otherwise improper. At least two witnesses testified that they verified the copies billed to them in order to backcharge them to their clients. Transcript, Vol. I, pp. 119-121. Finally, the Memorandum & Order of the district court filed August 20, 1997, declared, "Here billings were for legitimate copy expenses." Pet. App. A-58.

D. District Court ruling.

The facts of the present case mirrored those of *Parr*, but the district court assumed that the main thrust of Petitioner's argument was that innocent mailings could not support a conviction for mail fraud. The district court attempted to distinguish *Parr* on the basis of *U.S. v. Green*, 786 F.2d 247 (7th Cir. 1986), and *U.S. v. Schmuck*, 489 U.S. 705,109 S. Ct. 1443 (1989) (5-4 decision) (Scalia, J., dissenting). However, these two cases do not diminish the mandate of *Parr* on the outcome of this case. *Green* cannot support this conviction for the reason that it has effectively been overruled on this issue by this Court in *Schmuck*. In *Green*, the Seventh Circuit mistakenly stated:

> The Supreme Court held that these mailings were not enough: "we think it cannot be said that mailings **made or**

> **caused to be made under the imperative command of duty imposed by state law** are criminal under the federal mail fraud statute, even though some of those who are required to do the mailing for the District plan to steal, when or after received, some indefinite part of its moneys." **This language . . . is not the holding of *Parr*.**

U.S. v. Green, 786 F.2d 247, 250 (7th Cir. 1986) (citation omitted) (emphasis added). However, three years after *Green*, this Court expressly stated:

> This Court held [in *Parr*], however, that in the absence of any evidence that the tax levy was increased as part of the fraud, the mailing element of the offense could not be supplied by mailings "**made or caused to be made under the imperative command of duty imposed by state law.**"

U.S. v. Schmuck, 489 U.S. 705, 713 n.7, 109 S. Ct. 1443, 1449 (1989) (emphasis added). In other words, the Seventh Circuit's holding in *Green*, that the quoted passage from *Parr* was not the holding of Supreme Court in that case, was rejected by this Court in *Schmuck*. On this issue, *Green* cannot control. Mailings made or caused to be made under the imperative command of duty imposed by state law cannot provide the basis for a mail fraud conviction.

E. Court of Appeals Ruling.

The Seventh Circuit affirmed the mail fraud convictions and, in the process, misconstrued *Schmuck* and further disregarded this Court's holding in *Parr*. First, the court of appeals attempted to distinguish *Parr* on the basis that the mailed checks in *Parr* were deposited in proper accounts before the theft of funds while the checks in this case were deposited in an unauthorized account. Pet. App. A-6. This argument ignored the fact that some of the wrongdoing in *Parr* involved the opening of unauthorized bank accounts and the deposit of misappropriated checks therein. *Parr v. U.S.*, 363 U.S. 370, 375 & 378 n. 12, 80 S. Ct. 1171, 1175 & 1177 n. 12 (1960).

The court of appeals also tried to distinguish this case from *Parr* by finding that, "There was no practical necessity," to use the mail. Pet. App. A-6. This finding lacks merit for four reasons. First, Petitioner provided the court with numerous citations to Illinois law establishing his duty to render the bills mailed and collect the payments mailed. Second, the record was replete with testimony establishing that the mailing of such bills was standard practice in all Illinois county clerk offices. Third, the trial court hearing the evidence did **not** find that the use of mails was unnecessary. Finally, the Government admitted in its opening argument that the mailings were made pursuant to Mr. Trost's duties as county clerk, when it was stated:

> **Because of his duties as the Monroe County Clerk**, the defendant caused the bills to be mailed in the U.S. Mail to the various entities that had charged copies at the Monroe County Clerk's office.

Transcript, Vol. I, pp. 5 (emphasis added).

The court of appeals also misconstrued certain language from *Schmuck* and ignored other language from the same case to rationalize its disregard of the clear holding in *Parr*. According to the Seventh Circuit, the holding in *Parr* is limited by the following language from *Schmuck*:

> The relevant question at all times is whether the mailing is part of the execution of the scheme as conceived by the perpetrator at the time.

U.S. v. Schmuck, 489 U.S. 705, 715, 109 S. Ct. 1443, 1450 (1989). However, this language is not found in that part of the *Schmuck* opinion discussing compelled mailings. Rather, it comes from a part of the *Schmuck* opinion rejecting the argument that a mailing which increases the perpetrator's chances of getting caught cannot be a mailing for mail fraud purposes. Further, the court of appeals ignored the major difference between the conduct in *Schmuck* and the conduct in *Parr* and in this case, *i.e.* no legal duty to mail. The decision in *Schmuck* states:

> This court held [in *Parr*], however, that . . . the mailing element of the offense could not be supplied by mailings "made or caused to be made under the imperative command of duty imposed by state law." 363 U.S., at 391, 80 S. Ct., at 1184. **No such legal duty is at issue here**. . . . [T]he mailings in the present case . . . would not have occurred but for [the] scheme.

U.S. v. Schmuck, 489 U.S. 705, 713 n. 7, 109 S. Ct. 1443, 1449 n. 7 (1989) (emphasis added). In other words, *Schmuck* did not involve the legally-compelled mailings that this case and the *Parr* case have in common.

The court of appeals affirmed Mr. Trost's mail fraud conviction because, "The mailing was clearly part of the scheme—in fact, the scheme would not have worked without the mailings." Pet. App. A-6. However, this is irrelevant under *Parr*. *Parr* did not hold that the mailings weren't an integral part of the scheme or that the scheme would not have worked without the mailings. As Justice Scalia stated in the dissenting opinion in *Schmuck*: "We have held that the indispensability of such mechanical mailings, not strictly in furtherance of the fraud, is not enough to invoke the statute." *Schmuck*, at 724, 109 S. Ct. at 1455 (1989).

The Court's language in *Parr* is simple and straightforward:

> We think it cannot be said that mailings made or caused to be made under the imperative command of duty imposed by state law are criminal under the federal mail fraud statute, even though some of those who are required to do the mailing for the District plan to steal, when or after received, some indefinite part of its moneys.

Parr v. U. S., 363 U.S. 370, 390-391, 80 S. Ct. 1171, 1183-1184 (1960). The tax bills in *Parr* were mailed pursuant to statutory duty and would have been mailed regardless of the fraudulent scheme. Similarly, the copy bills in this case were mailed pursuant to statutory duty and would have been mailed regardless of the alleged fraudulent scheme. The important facts in

Parr and this case are nearly identical, and the Seventh Circuit failed to find any legitimate material distinctions between the two cases.

F. Circuits Now Split on *Parr's* Continuing Vitality.

The Seventh Circuit's rulings in this case and in the *Green* case call into question the continuing validity of *Parr*. However, the continuing validity of this rule from *Parr* is still recognized by other circuits:

> The exception in *Parr* applies . . . where the mailings are both not themselves false or fraudulent, and their mailing is required by law.

U.S. v. Krenning, 93 F.3d 1257, 1263 (5th Cir. 1996). In *Krenning*, the Fifth Circuit also noted that the factual scenario in *Parr* involved mailings that would have occurred irrespective of the embezzlement scheme. Similarly, the Third Circuit reversed convictions for conspiracy to commit mail fraud in the case of *U.S. v. Cross*, 128 F.3d 145 (3rd Cir. 1997), stating:

> As in *Parr*, the relevant mailings would, of necessity, have been made whether or not the conspiracy existed, and they would have performed precisely the same function in the absence of the conspiracy that they performed during its continuance. . . . The Scope of the federal mail fraud statute is limited. The Supreme Court has clearly held that legally required mailings in circumstances like those in this case cannot be deemed to have been made for the purpose of executing a fraudulent scheme.

U.S. v. Cross, 128 F.3d 145, 151-152 (3rd Cir. 1997). The holding from *Parr* cited by these cases applies with equal force here where the photocopy fee bills mailed by Mr. Trost were legitimate, required and would have been mailed irrespective of any alleged scheme to embezzle.

G. Conclusion.

Apparently, the split between the circuits that has occurred is the type of problem anticipated by Justice Scalia in his dissenting opinion in *Schmuck*:

> All the more reason to adhere as closely as possible to past cases. I think that we have not done that today, and thus create problems for tomorrow.

U.S. v. Schmuck, 489 U.S. 705, 725, 109 S. Ct. 1443, 1455 (1989) (5-4 decision) (Scalia, J., dissenting). Tomorrow is now here in the present case.

In his dissent, Justice Scalia argued that the mail fraud statute was not as far-reaching as the majority held:

> The law does not establish a general federal remedy against fraudulent conduct, with use of mails as the jurisdictional hook . . . . [I]t is mail fraud, not mail and fraud, that incurs liability. This federal statute is not violated by a fraudulent scheme in which, at some point, a mailing happens to occur—nor even one in which a mailing predictably and necessarily occurs.

Schmuck, at 723-4, 109 S. Ct. at 1454. The Seventh Circuit appears to believe that the majority opinion in *Schmuck* allows prosecutors to use the mail fraud statute in the manner that Justice Scalia apparently feared could happen. The Third and Fifth Circuits do not agree with the Seventh Circuit that *Parr* allows such use of the mail fraud statute. This Court should grant certiorari in this case and resolve the dispute and reverse the judgment of the court of appeals.

II. THE SEVENTH CIRCUIT HAS ALLOWED OVERLY EXPANSIVE USE OF 18 U.S.C. § 666.

The Government's evidence as to Counts 13-16 was insufficient to sustain a conviction under 18 U.S.C. § 666 unless an overly expansive application of the statute is adopted. The standard of review with respect to the denial of a motion for

judgment of acquittal is *de novo*, although the record is viewed in the light most favorable to the prosecution, and the conviction will not be reversed if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *U.S. v. Draves*, 103 F.3d 1328, 1332 (7th Cir. 1997). However, pure issues of law are reviewed on a plenary basis, *U.S. v. Boyd*, 55 F.3d 239, 242 (7th Cir. 1995), as is a district court's statutory interpretation. *U.S. v. Bates*, 96 F.3d 964, 967 (7th Cir. 1996).

A. Entity Confusion.

The acts alleged in Counts 13-16 do not violate 18 U.S.C. § 666 because Mr. Trost was not an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof, that received, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance. The Indictment alleged that, "Monroe County, Illinois, a local governmental entity," received federally-funded benefits. Indictment, Pet. App. A-29 - 30. However, Mr. Trost was not charged with embezzlement from "Monroe County" but, rather, with, "Embezzl[ing] property and funds in excess of $5,000 that was owned and under the care, custody and control of **the Monroe County Clerk's Office**." *Id.* (emphasis added). In other words, the Indictment inconsistently alleged that Mr. Trost embezzled from a **different** entity than the particular entity that the Indictment alleged received federal funds. There was no evidence presented as to the relationship between Monroe County, Illinois and the separately created constitutional office of the County Clerk of Monroe County. The plain language of 18 U.S.C. § 666 requires the embezzlement to be from the same entity that receives the federal funds. Thus, the Indictment was defective and did not charge a violation of 18 U.S.C. § 666.

The defective Indictment is understandable because the defect is grounded in fact. Illinois Counties are created by the Illinois General Assembly. Ill. Const. art. VII, § 2(a). However, the

position of county clerk is created by the Illinois Constitution. An Illinois county clerk is not a county government agent as such even though he may perform ancillary functions for a county. A similar situation exists with respect to a resident circuit judge who is officed and whose function is supported, in part, by a county. An Illinois county clerk is a Constitutional officer. The office is created by the Illinois Constitution, and neither the legislature nor a county has the power to abolish the office or in any way control its term or selection save as permitted by the Constitution of the State of Illinois:

> Offices **other than** sheriff, **county clerk** and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices **other than** sheriff, **county clerk**, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance.

Ill. Const. art. VII, §4(c), (emphasis added).

The independent nature of the office of county clerk is recognized by the Illinois General Assembly: "The county clerk shall have the right to control the internal operations of his office; to procure necessary equipment, materials and services to perform the duties of his office." 55 ILCS 5/3-2003.2. This distinction has been accepted by the Illinois Attorney General. 1977 Op. Atty. Gen. No. S-1260 (absent request by county clerk, county board cannot contract with private firm to perform clerk's duties); 1984 Op. Atty. Gen. No. 84-003 (county board cannot review county clerk budget line items); 1978 Op. Atty. Gen. No. S-1329 (county clerk not required to obey county ordinance requiring use of county purchasing department).

This distinction is supported by the definition of "agent" found in 18 U.S.C. § 666 itself: "The term 'agent' means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager,

and representative." No evidence was presented to prove that Mr. Trost was authorized to act on behalf of Monroe County, and by statute, he is only authorized to act on behalf of and manage the affairs of his own constitutional office. An Illinois County Clerk is not a "clerk" in the traditional or ordinary meaning of that term. There was no evidence that Mr. Trost was a traditional "servant" or "employee" with a contractual or at-will employment or that there was any reporting requirement to a boss or supervisor. Evidence as to the relationship was fatally absent from the proceeding.

Additional support for the distinction between the county and the clerk's office is found in the case of *U.S. v. Nichols*, 40 F.3d 999 (9th Cir. 1994). That case involved funds that were stolen from the Los Angeles County Sheriff's Department. In the application and analysis of 18 U.S.C. § 666 in *Nichols*, the U.S. Attorney's office, the U.S. District Court for the Central District of California, and the Ninth Circuit all assumed that the receipt of federal funds had to be by the entity from which funds were stolen i.e., the Los Angeles County Sheriff's Department, rather than from Los Angeles County itself. The appellate court's decision was based on its finding that the Sheriff's Department had received federal funds. Certainly, there would have been no point in appealing in that case if there was no distinction between the Los Angeles County Sheriff's Department and Los Angeles County itself.

This same principle appears in other cases as well, including *U.S. v. Valentine*, 63 F.3d 459 (6th Cir. 1995) (conviction of Secretary/Treasurer of city water department under § 666 required receipt of federal funds by water department rather than city), *U.S. v. Simas*, 937 F.2d 459 (9th Cir. 1991) (multi-county transportation agency must be recipient rather than counties), and *U.S. v. Frega*, 933 F. Supp. 1536 (S.D. Cal. 1996) (receipt of federal funds by state insufficient to convict state court judge).

A survey of published cases involving § 666 indicates that courts have required that this funding be shown to exist

> at a fairly specific level, and not at the general government level. . . . This specificity is significant in that it reinforces the view that § 666 was intended to protect the integrity of federal funds, and not as a general anti-corruption statute."

U.S. v. Frega, 933 F. Supp. 1536, 1542 (S.D. Cal. 1996).

In an analogous case, this Court looked to Alabama state law to make the determination that an Alabama County Sheriff was not an agent of an Alabama county for civil rights purposes. *McMillian v. Monroe County, Alabama*, 520 U.S. 781, 117 S. Ct. 1734 (1997). Analysis of Illinois state law reveals the same distinction in the present case, namely that the office or position of an Illinois County Clerk is a separate constitutional entity from an Illinois county.

The distinction found in *Nichols*, *Valentine*, *Simas*, *Frega* and *McMillian* is analogous to the distinction at issue in this case. The relationship between a county and the office of a County Clerk is carefully set forth in the Illinois Constitution and statutes. It cannot be pigeon-holed as a typical employer-employee or principal-agent relationship. As recognized by the Indictment, the Illinois Constitution, Illinois statutes and the Illinois Attorney General, the County of Monroe and the County Clerk's Office of Monroe County are two separate and distinct entities. 18 U.S.C. § 666 must be strictly construed. *U.S. v. Barquin*, 799 F.2d 619, 620 (10th Cir. 1986); *U.S. v. Cicco*, 938 F.2d 441, 444 (3rd Cir. 1991); *See Dowling v. U.S.*, 473 U.S. 207, 105 S. Ct. 3127 (1985). Without any supporting evidence, the district court found that Mr. Trost was the agent of Monroe County, the entity receiving federal funds. Memorandum of Decision filed August 20, 1997, Pet. App. A-44. However, as shown herein, Mr. Trost was not an "agent" of Monroe County. There was no evidence to the contrary. Both the law and the facts required reversal of Mr. Trost's convictions on Counts 13-16 and the entry of a judgment of acquittal thereon.

However, the Seventh Circuit dismissed this argument in just three sentences:

> It is, relatively speaking, a small county. [Trost's] department is not sufficiently independent for us to require that the federal funds come directly to the clerk's office for the statute to apply. [citation omitted] For purposes of § 666, Trost is an agent of the entity which receives federal money.

Pet. App. A-9. There was no evidentiary or legal basis for such a statement. Apparently, in the Seventh Circuit, there is a different analysis applied to big city defendants than the one applied to "small county" defendants such as Mr. Trost. Petitioner is unaware of any statutory or constitutional provisions providing for a different quality of justice and due process for urbanites as opposed to those who are not.

The only Supreme Court precedent cited for this arbitrary ruling was the case of *Salinas v. U.S.*, 522 U.S. 52, 118 S. Ct. 469 (1997). *Salinas* was a bribery case, not a theft case, and the county employee in question was paid a large portion of his salary pursuant to a federal contract. But, there must, nevertheless, be **some** nexus between the embezzled funds which form the basis of the federal prosecution, and some sort of program receiving federal funding. *U.S. v. Moeller*, 987 F.2d 1134, 1137 (5th Cir. 1993). While the Seventh Circuit may not appreciate the import of this principle, this principle has not been lost on other courts: "§ 666 was intended to protect the integrity of federal funds, and not as a general anti-corruption statute." *U.S. v. Frega*, 933 F. Supp. 1536, 1542 (S.D. Cal. 1996). A prosecution in the present case, if warranted, centered around facts related to state issues and in no way implicated federal funds or the policies behind the enactment of § 666.

Further, the Government failed to prove the element of an 18 U.S.C. § 666 offense relied on by the court of appeals, which requires that the property allegedly stolen, *i.e.* funds from the

office of the County Clerk, was, at the time, owned by, or under the care, custody, or control of Monroe County. The Indictment did not charge Mr. Trost with embezzling from the same entity that purportedly received federal funds, which was Monroe County. The Indictment alleged that the funds were owned and under the care, custody and control of the Monroe County Clerk's Office. However, in order to satisfy the plain language of 18 U.S.C. § 666, the funds embezzled must be owned and under the care, custody and control of the same entity receiving the federal funds. *See U.S. v. Peery*, 977 F.2d 1230, 1232 (8th Cir. 1992) ("To violate this statute, the organization from which the funds were stolen must receive 'benefits'"); *U.S. v. Urlacher*, 784 F. Supp. 61 (W.D. N.Y. 1992) ("So long as the property is under the care or control of the government or agency concerned and so long as that entity receives [federal funds]"), *aff'd*, 979 F.2d 935 (2nd Cir. 1992). Mr. Trost held an independent constitutional office separate and apart from the County. Both the Indictment and the Government's evidence failed to satisfy the mutual entity requirement of 18 U.S.C. § 666.

The foregoing analysis relating to the distinction between funds of the office of the Clerk of Monroe County and funds of Monroe County is further demonstrated by the fact that, historically, funds collected by Mr. Trost do not become county funds until turned over by such a separate constitutional officer to the County. This fact is evidenced by the Illinois crime of Not Turning Over, **a Class A Misdemeanor**. 55 ILCS 5/4-13001. If the funds collected by a County Clerk were recognized by Illinois law as county funds, it would not have been necessary for the Legislature to create a separate criminal offense for failure to turn over funds. The fact that 55 ILCS 5/4-13001 exists demonstrates that the funds collected and allegedly stolen were not owned or under the care, custody and control of Monroe County.

Another indicator that County Clerk funds do not equal county funds for purposes of 18 U.S.C. § 666 is that no evidence was presented to show Mr. Trost exercised any control over

county funds or, more specifically, federal funds purportedly received by Monroe County. No witness testified that Mr. Trost had authority as to federal funds or any ability to embezzle federal funds or the funds of the entity receiving federal funds *i.e.,* the Monroe County entity. There is no indication in the history of 18 U.S.C. § 666 that Congress intended federal law enforcement agencies to police the financial affairs of **entities that do not administer federal funds**. *U.S. v. Wyncoop*, 11 F.3d 119, 122 (9th Cir. 1993). "§ 666's manifest purpose is to safeguard finite federal resources from corruption and to police **those with control of federal funds**." *U.S. v. Rooney*, 37 F.3d 847, 851 (2nd Cir. 1994) (emphasis added). Even while affirming a conviction, the 2nd Circuit observed, "It would be quite another case if the corrupted business affected neither the financial interests of the protected organization nor . . . federal funds directly." *U.S. v. Bonito*, 57 F.3d 167, 173 (2nd Cir. 1995). From the very title of 18 U.S.C. § 666, "Theft or bribery concerning programs receiving Federal funds," it should be clear that, for important Constitutional reasons relating to federalism, there must be some nexus between the embezzled funds which form the basis of the federal prosecution, and some sort of program receiving federal funding. *U.S. v. Moeller*, 987 F.2d 1134, 1137 (5th Cir. 1993).

Of significance is the fact that Monroe County Treasurer Merrill Prange testified in the present case that all of the alleged federal funds received by Monroe County were used for the purpose for which they were received, or returned to the entity from which they were received. Transcript, Vol. II, pp. 21-25. It is obvious that Prange segregated those funds and **not one penny of funds alleged to be federal was ever missing!** This fact is still further evidence that this prosecution is passing strange and concerns at best a state matter that in no way involves federal funds or the policies behind the enactment of 18 U.S.C. § 666.

B. Conclusion.

The prosecution in this case distorts the stated purpose for the legislation: "To protect the integrity of the vast sums of money distributed through Federal programs from theft." S.Rep. No. 225, 98th Cong., 2d Sess. 369, *reprinted in* 1984 U.S. Code Cong. & Admin.News 3182, 3511. What is the federal interest in protecting funds that have no connection with the federal government from a person who has no authority over or access to any federal funds? The court's analysis in the *Frega* case is applicable to the present case. As that court stated:

> In this case, the indictment does not allege that federal funds were corruptly administered, were in danger of being corruptly administered, or even could have been corruptly administered. Although the alleged conduct of the defendants is troubling, it does not appear to have threatened, either directly or indirectly, federal funds.

U.S. v. Frega, 933 F. Supp. 1536, 1543 (S.D. Cal. 1996).

For the reasons stated, the judgment of the court of appeals should be reversed.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 97-4204

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

RICHARD A. TROST,
Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Illinois
No. 95-CR-30135-WDS—William D. Stiehl, Judge

ARGUED MAY 29, 1998 — DECIDED AUGUST 17, 1998

Before CUMMINGS, RIPPLE, and EVANS, *Circuit Judges.*

EVANS, Circuit Judge. Prior to being carted off to federal prison in December 1997, Richard A. Trost was the elected county clerk and recorder of Monroe County, Illinois, a post he held since 1966. In December of 1995 Trost was charged in a 17-count federal indictment with mail fraud in violation of 18 U.S.C. § 1341; money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(j); and theft from an entity receiving federal funds in violation of 18 U.S.C. § 666. The indictment also contained a forfeiture count pursuant to 18 U.S.C. § 982. In August 1997 District Judge William D. Stiehl heard the case without a jury and found Trost guilty of all but one of the charges. Trost was sentenced to 50 months imprisonment, to be followed by 3 years of supervised release. He was ordered to make restitution to Monroe County in the amount of $100,123.71. In addition, his assets were found forfeitable in the amount of $57,412 with his

residence forfeitable up to the amount of $22,000. He appeals the conviction and the order of forfeiture.[1]

Trost's activities came to light when Eugene Schorb, an outside auditor of Monroe County, uncovered irregularities in the way the clerk's office was handling funds. What Schorb outlined in a report for the county board was a scheme in which, for instance, Trost made it look like various checks were written (and paid) to a computer supplier when in fact the checks were never delivered to that supplier. Rather, Trost made out identical checks to himself but with check numbers 100 higher than those allegedly written to the supplier. Amazingly, he then used a pen to alter the check numbers on the bank statements to make it look as if the checks to the computer supplier were the ones which were cashed when actually he cashed the ones made out to himself. At the time Schorb discovered and outlined the scheme, he thought the missing funds came to $14,000. When Trost was confronted with the report at a special meeting of the board, he admitted that he had no innocent explanation of the events. Immediately after the meeting Trost told the state's attorney that he would repay the money, which he did the next day.

However, as might be expected after this revelation—and almost certainly not just because the sheriff and he were of different political parties, as Trost would have us believe—an investigation was begun with the involvement of both the Monroe County state's attorney and the United States Attorney, under the supervision of an assistant United Statesattorney. As part of the investigation, two search warrants were executed, one for the clerk's office and one for Trost's home.

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[1] After oral argument in this case, Trost filed a motion to strike certain statements made by the government lawyer at argument concerning the financial recordkeeping and funding for Monroe County and the clerk's office. Any such statements pertinent to our consideration of this case involve matters of public record or items which appear in some form in the record of this case. The motion is therefore denied.

The investigation uncovered another scheme and other missing funds to the tune of $100,000. Under this scheme Trost allowed those patrons of the clerk's office who regularly made photocopies of documents to run up a tab and to be billed for their copies, usually on a monthly basis. Trost maintained control of this billing system. He gave each customer a control number; then on a routine basis he sent out bills. He instructed those who delivered the mail in the office to bring all of it to his desk. He then personally opened the mail and took out checks that were sent as payment for copies made on the clerk's office machine. The rest of the mail was then distributed to the appropriate deputy clerks. If Trost was absent from the office, the mail, with the exception of certain filings that the deputies could recognize, remained unopened until his return. If customers wished to pay at the time they made copies, or if the monthly bill was paid in person rather than by mail, a deputy clerk would deposit the payment into an official, legitimate county account.

But the official county account did not receive the payments which were mailed in. Those were deposited into an account at the State Bank of Waterloo—the Richard A. Trost "Special Account," account number 120456. Illinois law allowed clerks to set up special accounts, but this one, while bearing some trappings of official special accounts, also was significantly different from what one would expect of special accounts. The account bore the defendant's home address and his social security number, rather than the office address in the Monroe County Courthouse and the county's taxpayer identification number. Into this account went both checks payable to Trost in his official capacity for copies and unauthorized transfers from other county accounts as well as from payments from the state for election judges. Trost used the special account to pay personal debts. He often transferred funds from legitimate county accounts to the special account and from there to his joint account with his wife. For whatever reason, the bank did not become suspicious, and the county auditor knew nothing of the account.

Trost seems to acknowledge that there was something wrong with what he did, but he maintains in this appeal that whatever was wrong does not add up to mail fraud, money laundering, nor embezzlement from an entity receiving in excess of $10,000 in federal funds. He also attacks the forfeiture and contends that the evidence obtained from the search warrants should have been suppressed.

Relying on *Parr v. United States*, 363 U.S. 370, 80 S.Ct. 1171, 4 L.Ed.2d 1277 (1960), Trost argues that he is not guilty of mail fraud because the mailings were not for the purpose of executing the scheme and that the use of the mails was part of his duties as county clerk and recorder of deeds, performed in the ordinary course of business. He emphasizes that in *Parr*, the Court determined that the mail fraud statute did not apply to a situation in which school board members converted real estate tax payments received through the mails. Trost analogizes his situation to that in *Parr* and claims that he was "required and lawfully entitled to assess and collect the fees." He argues that the Court "has ruled that such mailing of legitimate bills for legitimate fees pursuant to the imperative of duty and then converting the checks received in the mail for payment of those bills does not constitute use of the mails under 18 U.S.C. § 1341."

His argument is based on an overly simplistic comparison of his situation to *Parr* and a failure to acknowledge later explications of the *Parr* holding. In the relevant portions of *Parr*, the Court considered whether the use of the mails to distribute tax bills and to receive payments of those bills—payments which were brazenly misappropriated by the seven members of the school board after they were received—constituted mail fraud. The Court determined that the mailings were not for the purpose of executing a scheme to defraud. The school board was under "an express constitutional mandate to levy and collect taxes for the acquisition of facilities for, and to maintain and operate, the schools of the District...." At 387, 80 S.Ct. 1171. It was required

by statute "to issue statements for such taxes and to deliver receipts upon payment." At 387, 80 S.Ct. 1171. In addition, there was no evidence that the tax bills were inflated to cover the losses. Furthermore, the board was collecting taxes, in part, from nonresident property owners and thus was "required by the state law to use the mails." At 388, 80 S.Ct. 1171. In *Parr*, the government had argued, in fact, that the board could not collect the taxes "without the use of the United States Mails." Thus the question in the case was whether "the legally compelled mailings of the lawful ... letters, tax statements, checks and receipts, . . . properly may be said to have been for the purpose of executing a scheme to defraud...." At 389, 80 S.Ct. 1171. In reaching its conclusion that they could not, the Court emphasized that it was deciding the issue based "on the particular circumstances" of the case. The money would come to the district coffers through the mail regardless of what the defendants did. Their crimes occurred after the money legitimately arrived in the district accounts. The crimes committed by the *Parr* defendants included embezzlement, misappropriation, and theft, but not mail fraud.

In a later case, *Schmuck v. United States*, 489 U.S. 705, 714-15, 109 S.Ct. 1443, 103 L.Ed.2d 734 (1989), the Court placed a limit on the *Parr* holding. It said:

> To the extent that *Schmuck* would draw from these previous cases a general rule that routine mailings that are innocent in themselves cannot supply the mailing element of the mail fraud offense, he misapprehends this Court's precedents. In *Parr* the Court specifically acknowledged that "innocent" mailings—ones that contain nofalse information-may supply the mailing element. 363 U.S., at 390, 80 S.Ct. 1171. In other cases, the Court has found the elements of mail fraud to be satisfied where the mailings have been routine.

The relevant consideration is always "whether the mailing is part of the execution of the scheme as conceived by the perpetrator at the time...." At 715, 109 S.Ct. 1443.

In Trost's case, as to counts 1 through 4 (the fees for photocopies) the mailing was clearly part of the scheme—in fact, the scheme would not have worked without mailings. The use of the mails allowed Trost to circumvent the clerk's office accounts altogether and funnel the money to his "special account."

Trost's argument that the copy fees were legitimate fees which he was required to collect and that the circumstances required him to use the mails is unconvincing. It is true that he was authorized by statute to collect the fees. 55 ILCS 5 4-4001 specifically authorizes clerks to collect fees for copies, though it does not require it. However, there was no practical necessity in this case—as there was in *Parr*—to use the mails. In *Parr* the property tax bills were required to be distributed to every property owner in the district. The property owners were not people who would routinely come to the school board meetings, where if they happened to be there they could be handed a bill. Short of personally delivering all the bills to the owners, there was nothing to be done but mail them. In addition, some of the taxpayers were absentee owners, making personal delivery even more ridiculous an idea. Here, the only people billed for copies are those who either personally or through an agent went to the clerk's office to obtain copies. Even though it is routine for some clerks in Illinois to mail out bills for such services, there is no reason either legally or practically that billing would be necessary. Some persons, in fact, paid at the counter, either the immediate charges or the bill which they had received. The problem from Trost's point of view with over-the-counter payment is that he could not circumvent the legitimate county bank accounts if his deputy clerks received the money. The use of the mails was a crucial element of his scheme to channel the money around the office to the special account.

Which brings us to another distinction between the two cases. In *Parr* the funds were deposited in official district accounts. Then the money, with help from various defendants who were

bankers, was withdrawn from the accounts, for instance, by use of checks made out to fictitious persons; the checks were cashed by the bank without endorsements. Here, of course, the account was made to look to the bank like an official account, but in large part it was used for Trost's personal benefit. The county did not even know the account existed. Trost did not merely embezzle from existing official accounts, though he did that too; rather, he used the mails to funnel the money to what really turned out to be, practically speaking, a phony account.

Count 5 is a little more troublesome and a little more like *Parr*. While we see a difference between this count and the previous counts, neither Trost nor the government makes any significant attempt to discuss those differences. Trost merely argues that all the mail fraud counts involve official, innocent, legitimate mailings and that all of them fail under *Parr*. The government says the counts involve allegations constituting mail fraud because Trost used the mails and manipulated the delivery of mail to further his scheme.

Count 5 involves payments from the state to the county for elections judges. The evidence shows that each time there is an election the State Board of Elections sends forms out to county clerks in counties such as Monroe where there is no separate Board of Election Commissioners. The county clerk fills in the number of judges that were used in the election and returns it. The State Board pays the county clerk $10 per judge. The mailings were official, routine, and, in a practical sense, far more necessary than the mailings involved with the photocopy fees. They were consistent with mailings to other counties; they were generated by the state. Trost did not, in any real sense, cause the mailings.

The events set out in count 5 are, however, almost a serendipitous addition to his scheme. As long as he controlled the delivery of mail and the checks came through the mail directly to him, he

might as well put them in his "special account." And therein lies the crucial difference between the events alleged in count 5 and the *Parr* case. Trost manipulated the mail delivery to his office so that he could prevent the payments from landing in official county accounts. He did not let these particular routine payments run their course, be placed in legitimate accounts, and then embezzle from county accounts; he manipulated the mails to allow him to get at the money before the county knew about it. The events set out in count 5, while a little different from those in counts 1 through 4, appropriately constitute mail fraud.

Trost also argues that the evidence is insufficient to sustain his conviction on counts 13 through 16, in which he is charged with embezzling over $5,000 per year for the years 1991 through 1995 from an entity (Monroe County) which received in excess of $10,000 in federal funds per year, in violation of 18 U.S.C. § 666. His argument is that one must embezzle from the precise entity which receives the funds. He says he was not an agent of Monroe County, but rather a constitutional officer of the state. It was the county which received the money, not his office. Therefore, he says he cannot be convicted of a violation of § 666. We'd like to say that he stops short of arguing that to be convicted of embezzling he must be found to have embezzled the exact funds which came from the federal government, but, alas, he makes this argument, too. He also contends that because he is statutorily required to turn over to the county the county funds he receives, and the funds at issue had not yet been turned over to the county, he cannot be convicted of embezzling county funds. We hardly know where to begin our discussion.

The first thing to be said is that the latter two arguments are completely unavailing. His argument that the clerk's office and the county are separate entities and the federal money was distributed to the county is somewhat better. But not good enough. The Illinois statutes show that in counties such as Monroe the clerk must turn over the money he collects to the

county treasury. 55 ILCS 5 4-13001. It is, relatively speaking, a small county. His department is not sufficiently independent for us to require that the federal funds come directly to the clerk's office for the statute to apply. *See United States v. Grossi*, 143 F.3d 348 (7th Cir.1998). For purposes of § 666, Trost is an agent of the entity which receives the federal money. *See Salinas v. United States*___ U.S. ___, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997); *United States v. Grubb*, 11 F.3d 426 (4th Cir.1993).

Trost also contends that his conviction on the money laundering counts must be reversed, first because, once the mail fraud and embezzlement counts are dismissed, there will be no predicate offense on which to base the counts, and secondly because his actions did not involve concealment or disguise. We have disposed of the first argument. The second depends on the trial judge's interpretation of the facts. In general terms, what the evidence shows is that Trost took the checks which came through the mail; deposited them in a phony but legitimate looking county account over which he had absolute control, an account that the county knew nothing about; then, on occasions set out in the indictment, transferred funds to a personal account he held jointly with his wife; then, for instance, wrote a check on the joint account to pay a residential loan in his name and that of his wife. We cannot label as clearly erroneous the finding that Trost had a purpose to conceal the true source of the money. And it appears, in fact, that he successfully covered his trail for several years. His argument that his name was on the "special account" and therefore there was no concealment is disingenuous at best. The argument might have some force if the account had been allowed to look like a personal account in Trost's name or if he had paid his home mortgage with a check directly from that account. The account was in his name but in a manner designed to convince the bank that it was a "special" county account where he would be authorized to deposit the county money which poured into it. The arrangement apparently prevented the bank from becoming

suspicious while also successfully hiding the money from the county. Trost's challenges to his money laundering convictions are unconvincing.

Judge Stiehl also ordered a forfeiture of $57,412, but Trost argues that the appropriate sum, assuming we uphold his convictions, is only $23,000, the amount he was specifically convicted of laundering in the five money laundering counts. He also concedes that the court can order the forfeiture of Trost's interest in the family residence up to $22,000 and that it may seek substitute assets to cover the remaining $1,000. At trial the government first sought forfeiture of $114,424.93, the entire amount of money which was transferred though account 120456. Later, however, it was stipulated that because the amount stated in the indictment was $104,000, that figure would cap the forfeiture judgment.

The judge arrived at the forfeiture sum ordered by adding up all the illegally procured money which Trost was convicted of obtaining in counts 1 though 16 and then setting off amounts which had been counted twice.

The issue now is whether $57,000 is properly forfeited, not whether the judge could have ordered forfeiture of more. *United States v. Bajakajian*, ___U.S. ___ n. 11, 118 S.Ct. 2028, n. 11, 141 L.Ed.2d 314, n. 11 (1998). The statute allows forfeiture of amounts which are *involved in* money laundering. Interpreting § 981, the civil forfeiture statute, we have affirmed forfeitures even as we were cautioning that *involved in* has limits: illegal funds are not like "a drop of ink falling into a glass of water," thus discoloring an entire bank account. *United States v. $448,342.85*, 969 F.2d 474 (7th Cir.1992). The cautionary language does not carry the day for Trost. In his case, we have a bottle of ink diluted by a drop of water.

Trost's "special account" had an almost totally illicit purpose. Judge Stiehl found beyond a reasonable doubt that Trost used the

account to launder money embezzled from the county. He found that the account was used to facilitate the crimes of which Trost was convicted and that significantly more than $23,000 was funneled through the account to conceal or disguise the true nature of his activities. Furthermore, he found that there was no evidence that the use of the funds was bona fide or justified.

Given those findings we are convinced that a forfeiture in the amount of $57,000 is well within acceptable parameters. Money does not need to be derived from the crime to be forfeited. *United States v. $448,342.85.* It can be forfeited if it is involved in the crime. Sometimes, in fact, legitimate funds might be used to disguise illegitimate funds. Here, however, there is no argument that any of the money was legitimate. Rather, there is evidence that $94,561.42 in the account was stolen. The amount of the forfeiture clearly includes money *involved in* the crime, as required by 18 U.S.C. § 982.

Finally, Trost argues that he was subjected to two illegal searches. He contends that the first search was carried out in a manner which violated Rule 41 of the Federal Rules of Criminal Procedure and that the second search was, therefore, tainted as well. The alleged violation of Rule 41 is that a state officer applied for the warrant and the execution of the warrant took place without a federal official present. In addition, the return was not made in a timely manner. Such events could violate Rule 41(d), which requires that the return "shall be made promptly," and Rule 41(a), which says in part:

> Upon the request of a federal law enforcement officer or an attorney for the government, a search warrant authorized by this rule may be issued (1) by a federal magistrate judge, or a state court of record within the federal district, for a search of property or for a person within the district. . . .

The facts show that the warrant in this case was applied for by a state policeman and Sheriff Kelley. On the other hand, an

affidavit by an assistant United States attorney accompanied the request; it stated that the case would be prosecuted in federal court and named the assistant United States attorney who would be prosecuting it. At the time the warrant was executed, the federal agent who was to be involved in the search was unexpectedly called away to investigate a bank robbery, and thus no federal official was present for the first search. Finally, the return was made 29 days later but, we should also note, it was made in conjunction with the return from the second search.

If, in fact, these events add up to violations of Rule 41, a question we need not decide, the violation would not be prejudicial nor would there be an intentional disregard of the rule. *See United States v. Burke*, 517 F.2d 377 (2nd Cir.1975). They are not the sort of violations which would cause us to change the course we charted in *United States v. Hornick*, 815 F.2d 1156 (7th Cir.1987), where we said:

> It should be clear after *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), that technical defects in a warrant do not call for or permit exclusion of what the search produces. Judge Friendly's thorough opinion in *United States v. Burke*, 517 F.2d 377 (2d Cir.1975), discusses the extent to which suppression of evidence is the proper response to violations of Rule 41. Our own cases, roughly contemporaneous with *Burke*, say that foibles in the administration of Rule 41 are not grounds for exclusion. *United States v. Jones*, 518 F.2d 384, 387-88 (7th Cir.1975); *United States v. Harrington*, 504 F.2d 130 (7th Cir.1974). In light of Leon, it is difficult to anticipate any violation of Rule 41, short of a defect that also offends the Warrant Clause of the fourth amendment, that would call for suppression. Many remedies may be appropriate for deliberate violations of the rules, but freedom for the offender is not among them.

There being no reason to suppress evidence from the first search means that there is no reason to consider suppressing evidence obtained from the second one. The motion to suppress was properly denied.

The government also argues that Trost does not have standing to object to the first search of his office. We have not decided the issue on this basis because the argument has been raised for the first time on appeal. *See United States v. Thompson*, 944 F.2d 1331 (7th Cir.1991), cert. denied, 502 U.S. 1097, 112 S.Ct. 1177, 117 L.Ed.2d 422 (1992). However, the issue reveals the case in a microcosm. In order to assert that the evidence should be suppressed, Trost must necessarily be asserting an expectation of privacy in the evidence seized from his office, particularly in the bank records of the "special account." Is that an acknowledgment that he viewed it as a personal account? Furthermore, we would have to agree that Trost ran his office in a manner so as to demand privacy. Even his deputy clerks were not allowed to see some of the documents which came through the mail. But demanding secrecy to carry out illicit activities is not the same as having a legitimate expectation of privacy for purposes of the Fourth Amendment.

Trost's was a public office charged with keeping public records. Illinois statutes require:

> Custody of records; public inspection. The county clerk shall have the care and custody of all the records, books and papers appertaining to and filed or deposited in their respective offices, and the same, except as otherwise provided in the Vital Records Act, shall be open to the inspection of all persons without reward.

55 ILCS 5/3-2012. In the reply brief, Trost's attorneys argue that the search of Trost's office should not be compared to ordinary office search cases. Maybe not, but the argument put forth is exactly upside down. The difference Trost sees is that as "an elected official" he somehow has a right to more, not less, privacy despite the fact that his office is a repository of **public** records.

In what must be one of the most amazing lines ever set out in a brief, Trost's attorneys ask, "Would Mr. Starr be able to search the Oval Office without a search warrant?" Putting aside how lopsided that comparison is, and ignoring that here there was, in fact, a warrant, we are dumbstruck by the comparison, made, as it is, on behalf of a public official charged with the keeping of public records. If Mr. Trost himself approves of the question asked, perhaps that explains how he got into his present predicament. The conviction and the forfeiture are affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CRIMINAL NO._____

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RICHARD A. TROST,
Defendant.

Title 18
United States Code
Sections 1341, 1956, 666, 1957 and 982

Indictment

THE GRAND JURY CHARGES:

COUNT 1
(Mail Fraud)

PURPOSE OF SCHEME TO DEFRAUD

1) That from on or about June 1, 1987 through June 1, 1995, in Monroe County, within the Southern District of Illinois, and elsewhere,

RICHARD A. TROST,

the defendant herein, did devise a scheme and artifice to defraud Monroe County, the County's residents, as well as the office of Clerk and Recorder to which he was elected to serve, of in excess of $100,000.

2) "Use of mail," as it is used in this Indictment, means that the use of the United States mail was reasonably foreseeable but

not necessarily contemplated by the scheme nor that any item mailed necessarily contained a fraudulent representation or promise, just that the nailing furthered or attempted to further the scheme.

3) "Scheme," as is used in this Indictment, means a plan or course of action intended to deceive another and to deprive another of something of value by means of false pretenses, representations, or promises.

THE SCHEME TO DEFRAUD

4) At all times during the scheme to defraud, RICHARD A. TROST was the elected Clark of Monroe County, Illinois. During the performance of his official duties, he had access and control over County monies designated for use by his office, as well as funds received into his office as fees. These fees were obtained from sources such as the State of Illinois, private individuals, companies, and corporations. The fees were for services such as copying, recording deeds, and supplying voter records to the state, as well as for state payments for election judges.

5) During the time frames alleged in this indictment, TROST used his office and position so as to allow him to embezzle and divert County funds into his personal accounts, including an account that he opened as the Richard A. Trost "Special Account", which appeared to be a legitimate County account but which was in fact utilized as a personal account. These funds were then misappropriated by TROST for house payments, car payments, and other personal expenses not related to his official duties.

6) It was further apart of the scheme and artifice that the defendant utilized the United States rail in order to facilitate his thefts. This war, accomplished by his control over certain billings and reports that were mailed to private individuals, compa-

nies, corporations and financial institutions, as well as state offices and agencies. It was further part of the scheme and artifice that the defendant controlled the flow of United States mail into his office so that he would have access to checks that could be diverted into his personal accounts.

7) It was further a part of the scheme that the defendant would mail, or cause to be mailed, bills for copying services performed by the Monroe county Clerk's Office.

8) On many occasions, including those set out as counts 1-4 of this Indictment, the parties receiving the bill would by way of the U.S. Postal Service mail their payments for the service to the Monroe county Clerk's office.

9) That because of his control over the mail, the defendant was able to steal certain of these checks, including those set out in counts 1-4, by placing them into his "Special Account", account 120456, an account he utilized for personal rather than County expenses.

10) That at all times during the scheme to defraud, the defendant acted as the Monroe County Election Authority.

11) That in furtherance of his scheme to defraud, the defendant mailed or caused to be mailed to the State Board of Elections invoices requesting the State to reimburse Monroe County for legitimate expenses incurred during County elections.

12) That upon receipt of these requests, the State Comptroller's Office would mail to the defendant, in his capacity as the County Election Authority the funds that were due and owing to the County,

13) That the defendant, having control over the mail coming into his office, would steal certain of these checks, including the one set out in Count 5 of this Indictment, by placing AIM into account 120456, an account he utilized for personal rather than County expenses.

THE MAILING
(Mail Fraud)

14) On or about February 21, 1995, in the Southern District Of Illinois and elsewhere,

RICHARD A. TROST,

the defendant herein, for purposes of executing the scheme and artifice, did cause to be placed in the United States Mail in Belleville, Illinois, by Thovenot Wade & Moerchen, Inc., check number 23905, in the amount of $113, which was addressed to "Richard Trost, County Clerk", said check being for copy fees incurred by Thovenot, Wade & Moerchen, Inc., at the Monroe County Clerk's Office; all in violation of Title 18, United States Code, Section 1341.

COUNT 2
(Mail Fraud)

The grand jury realleges and incorporates by reference paragraphs 1 through 13 as if fully set forth in this count.

THE MAILING

15) On or about February 9, 1995, in the Southern District of Illinois and elsewhere,

RICHARD A. TROST,

the defendant herein, for purposes of executing the scheme and artifice, did cause to be placed in the United states mail by O'Fallon Progress, in Belleville, Illinois, check number 071929 in the amount of $132, which was addressed to the "Monroe County Clerk, Richard A. Trost", said check being for services performed by the Monroe County Clerk's Office for O'Fallon Progress; all in violation of Title 18, United states code, Section 1341.

COUNT 3
(Mail Fraud)

The grand jury realleges and incorporates by reference paragraphs 1 through 13 as if fully set forth in this count.

THE MAILING

16) On or about September 12, 1994, in the Southern District of Illinois and elsewhere,

RICHARD A. TROST,

the defendant herein, for purposes of executing the. scheme and artifice, did cause to be placed in the United States mail by Columbia Title Company, Inc., in Columbia, Illinois, check number 3-441, in the amount of $169, which was addressed to "Richard Trost, County Clerk", said check being for services performed by the Monroe County Clerk's office for Columbia Title Company, Inc.; all in violation of Title 18, United States code, Section 1341.

COUNT 4
(Mail Fraud)

The grand jury realleges and incorporates by reference paragraphs 1 through 13 as if fully set forth in this count.

THE MAILING

17) On or about November 15, 1994, in the Southern District of Illinois and elsewhere,

RICHARD A. TROST,

the defendant herein, for purposes of executing the scheme and artifice, did cause to be placed in the United States nail in Columbia, Illinois, by Traughber, Reitz & Morris, LTD., check number 11076, in the amount of $386.00, which was addressed to "Monroe Co. Recorder of Deeds", said check being for

services performed by the Monroe County Clerk Is Office, for Traughber , Reitz Morris, LTD.; all in violation of Title 18, United States code, Section 1341.

COUNT 5
(Mail Fraud)

The grand jury realleges and incorporates by reference paragraphs 1 through 13 as if fully set forth in this count.

THE MAILING

18) on or about March 30, 1994, in the Southern District of Illinois and elsewhere,

RICHARD A. TROST,

the defendant herein, for purposes of executing the scheme and artifice, did cause to be placed in the United States mail in. Springfield, Illinois, by the Comptroller for the State of Illinois, check number 8932883, in the amount of $1,350, which was addressed to "Trost, Richard A., Monroe County Clerk", said check being for reimbursement for election judges; all in violation of Title 18, United States code, Section 1341.

COUNT 6
(Money Laundering)

19) on or about April 1, 1993, in Monroe County, in the Southern District of Illinois,

RICHARD A. TROST,

the defendant herein:

A) Knowing that the property involved represented the proceeds of unlawful activity, as defined in Title 18, United States Code, Section 1956(c)(1);

B) Did knowingly conduct and cause to be conducted a series of financial transactions as defined in Title 18, United States Code, Section 1956(c)(4), that is, the defendant wrote check 311 payable to himself in -the amount of $5,000 from Monroe County account 101508 and deposited it into the defendant's "Special Account" 120456, both accounts being at the State Bank of Waterloo. The defendant then wrote check 412 in the amount of $5,000 out of account 120456 and deposited it into a joint account he shared with his wife at the let National Bank in Waterloo, that account being 0192347501, The defendant then wrote check 8545 out of account 0192347501 payable to Commercial State Bank in the amount of $5,166.94, which was credited by the Commercial State Bank to loan 20069931, a residential loan in the name of Richard A. Trost and his wife Yvonne R. Trost. All of theabove financial transactions except the payment to Commercial State Bank occurred on or were dated April 1, 1993. The payment to Commercial State Bank was dated April 2, 1993;

C. Said financial transactions did in fact involve the proceeds of a specified unlawful activity as defined in Title 18, United States Code, Section 1956(c) (7), namely the embezzlement of funds from a local governmental entity receiving federal funds and mail fraud, in violation of Title 18, United States Code, Sections 666 and 1341; and,

D. The defendant conducted and caused to be conducted a financial transaction, namely the writing of check 412 to himself out of his "Special Account" 120456, which he deposited into a joint account he shared with his wife at the 1st National Bank in Waterloo, with the intent to conceal and disguise the nature the location, the source, the ownership, and the control of the proceeds of the specified unlawful activity;,

all in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

COUNT 7
(Money Laundering)

20) On or about January 19, 1994, in Monroe County, in the Southern District Of Illinois,

RICHARD A. TROST,

the defendant herein:

A) Knowing that the property involved represented the proceeds of unlawful activity, as defined in Title 18, United States Code, Section 1956(c)(1);

B) Did knowingly conduct and cause to be conducted a series of financial transactions as defined in Title 181 United States Code, Section 1956(c)(4), that is, the defendant wrote check 332 payable to himself in the amount of $4,000 from Monroe County account 101508 and deposited it into the defendant's "Special Account" 120456, both accounts being at the State Bank of Waterloo. The defendant then wrote check 486 in the amount of $4,000 out of account 120456 and deposited it into a joint account he shared with his wife at the lst National Bank in Waterloo, that account being 0192347501. The defendant then wrote check 6932 out of account 0192347501 payable to Commercial State Bank in the amount of $4,443.75, which was credited by the Commercial State Bank for loan 20069931, a residential loan in the name of Richard A. Trost and his wife Yvonne R. Trost. All of the above financial transactions occurred on or were dated January 19, 1994;

C. Said financial transactions did in fact involve the proceeds of a specified unlawful activity as defined in Title 18, United States Code, Section 1556(c) (7), namely the embezzlement of funds from a local governmental entity receiving federal funds and mail fraud, in violation of Title 18, United States Code, Sections 666 and 1341; and

D. The defendant conducted and caused to be conducted a financial transaction, namely the writing of check 486 to himself out of his "Special Account" 120456, which he deposited into a joint account he shared with his wife at the 1st National Bank in Waterloo, with the intent to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of the specified unlawful activity;

all in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

COUNT 8
(Money Laundering)

21) On or about, January 13, 1993, in Monroe county, in the Southern District of Illinois,

RICHARD A. TROST,

the defendant herein:

A) Knowing that - the property involved represented the proceeds of unlawful activity, as defined in Title 18, United States Code, Section 1956(c)(1);

B) Did knowingly conduct and cause to be conducted a series of financial transactions as defined in Title 18, United States Code, Section 1956(c)(4), that is, the defendant wrote check 306 payable to himself in the amount of $5,000 from Monroe County account 101508 and deposited it into the defendant's "Special Account" 120456, both accounts being at the State Bank of Waterloo. The defendant then wrote check 385 in the amount of $5,000 Out of account 120456 and deposited it into a joint account he shared with his wife at the 1st National Bank in Waterloo, that account being 0192347501. The defendant then wrote check 8447 out of account 0192347501 payable to CommercialState Bank in the amount of $50166.94, which was

credited by the Commercial State Bank to loan 20069931, a residential loan in the name of Richard A. Trost and his wife, Yvonne R. Trost. All of the above financial transactions occurred on or were dated January 13, 1993;

C. Said financial transactions did in fact involve the proceeds of a specified unlawful activity as defined in Title I8, United States code, Section 1956 (c) (7) , namely the embezzlement of funds from a local governmental entity receiving federal funds and mail fraud, in violation of Title 18, United States Code, Sections 666 and 1341; and

D. The defendant conducted and caused to be conducted a financial transaction, namely the writing of check 385 to himself out of his "Special Account" 120456, which he deposited into a joint account he shared with his wife at the 1st National Bank in Waterloo, with the intent to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of the specified unlawful activity

all in violation of Title 18, United States Code, Section 1956 (a) (1) (B) (i)

COUNT 9
(Money Laundering)

22) On or about April 3, 1992, in Monroe County, in the Southern District of Illinois,

RICHARD A. TROST,

the defendant herein:

A) Knowing that the property involved represented the proceeds of unlawful activity, as defined in Title 18, United States code, Section 1956(c)(1);

B) Did knowingly conduct and cause to be conducted a series of financial transactions as defined in Title 181 United States

Code, Section 1956(c)(4,) that is, the defendant wrote check 285 payable to himself in the amount of $3,000 from Monroe County account 101508 and deposited it into the defendant's "Special Account" 120456, both accounts being at the State Bank of Waterloo. The defendant then wrote check 320 in the amount of $3,000 out of account 120456 and deposited it into a joint account he shared with his wife at the lot National Bank in Waterloo, that account being 0192347501. The defendant then wrote check 8037 out of account 0192347501 payable to Commercial State Bank in the amount of $5,166.94, which was credited to loan 20069931, a residential loan in the name of Richard A. Trost and his wife, Yvonne R. Trost. All of the above financial transactions except the house payment occurred on or were dated April 3, 1992. The house payment indicated an April 2nd date of writing, but was credited by the bank toward the loan on April 3, 1992;

C. Said financial transactions did in fact involve the proceeds of a specified unlawful activity as defined in Title 18, United States Code, Section 1956(c) (7), namely the embezzlement of funds from a local governmental entity receiving federal funds and mail fraud, in violation of Title 18, United States code, Sections 666 and 1341; and

D. The defendant conducted and caused to be conducted a financial transaction, namely the writing of check 320 to himself out of his "Special Account" 120456, which he deposited into a joint account he shared with his wife at the 1st National Bank in Waterloo, with the intent to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of the specified unlawful activity;

all in violation of Title 18, United States code, section 19 5 6 (a) (1) (B) (i) .

COUNT 10
(Money Laundering)

23) On or about January 3, 1992, in Monroe County, in the Southern District of Illinois,

RICHARD A. TROST,

defendant herein:

A) Knowing that the property involved represented the proceeds of unlawful activity, as defined in Title 18, United States Code, Section 1956(c)(1);

B) bid knowingly conduct and cause to be conducted a series of financial transactions as defined in Title 18, United States Code, Section 1956(c)(4), that is, the defendant wrote check 278 payable to himself in the amount of $5,000 from Monroe County account 101508 and deposited it into the defendant's "Special Account" 120456, both accounts being at the State Bank of Waterloo. The defendant then wrote check 297 in the amount of $5,000 out of account 120456 and deposited it into a joint account he shared with his wife at the lot National Bank in Waterloo, that account being 0192347501. The defendant then wrote check 7916 out of account 0192347501 payable to Commercial State Bank in the amount of $5,166.94, which was credited by the Commercial State Bank to loan 20069931, aresidential loan in the name of Richard A. Trost and his wife, Yvonne R. Trost, All of the above financial transactions occurred on or were dated January 3, 1992;

C. Said financial transactions did in fact involve the proceeds of a specified unlawful activity as defined in Title 18, United States Code, Section 1956(c) (7), namely the embezzlement of funds from a local governmental entity receiving federal funds and mail fraud, in violation of Title 18, United States Code, sections 666 and 13411 and

D. The defendant conducted and caused to be conducted a financial transaction, namely the writing of check 297 to himself out of his "Special Account" 120456, which he deposited into a joint account that he shared with his wife at the lot National Bank in Waterloo, with the intent to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of the specified unlawful activity;

all in violation of Title Is, United States Code, Section 1956 (a) (1) (B) (i) .

COUNT 11
(Money Laundering)

24) on or about March 28, 1991, in Monroe County, in the Southern District of Illinois,

RICHARD A. TROST,

the defendant herein:

A) Knowing that the property involved represented the proceeds of unlawful activity, as defined in Title 18, United States Code, Section 1956(c)(I);

B) Did knowingly conduct and cause to be conducted a series of financial transactions as defined in Title 18, United States Code, Section 1956(c)(4), that is, the defendant wrote check 118 payable to himself in the amount of $1,000 from Monroe County account 132268 and deposited it into the defendant's "Special Account" 120456, both accounts being at the State Bank of Waterloo. The defendant then wrote check 256 in the amount of $1,318.11 out of account 120456 and made payments to the State Bank of Waterloo for vehicle loan numbers 20672 and 20673. All of the above financial transactions occurred on or were dated March 28, 19911

C. Said financial transactions did in fact involve the proceeds of a specified unlawful activity as defined in Title 18, United

States Code, Section 1956 (c) (7) , namely the embezzlement of funds from a local governmental entity receiving federal funds and mail fraud in violation of Title 18, United States Code, Sections 666 and 13411 and

D. The defendant conducted and caused to be conducted a financial transaction, namely the writing of check 118 to himself out of Monroe County account 132268, which he deposited into his "Special Account" 120456, with the intent to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of the specified unlawful activity;

all in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i) .

COUNT 12
(Embezzlement)

25) From within the period of January 1, 1995 through December 18, 1995, in Monroe County, which is within the Southern District of Illinois, the defendant,

RICHARD A. TROST,

the elected clerk of Monroe County, Illinois, a local governmental entity, which received in calendar year 1995 federally-funded benefits in excess of $10,000, did embezzle property and funds in excess of $5,000 that was owned and under the care, custody and control of the Monroe County Clerk's Officer all in violation of Title 18, United states Code, Section 666.

COUNT 13
(Embezzlement)

26) From within the period of January 1, 1994 through December 31, 1994, in Monroe County, which is within the Southern District of Illinois, the defendant,

RICHARD A. TROST,

the elected clerk of Monroe County, Illinois, a local governmental entity, which received in calendar year 1994 federally-funded benefits in excess of $10,000, did embezzle in excess of $5,000 that was owned and under the care, custody and control of the Monroe County Clark's Office; all in violation of Title 18, United States Code, Section 666.

COUNT 14
(Embezzlement)

27) From within the period of January 11 1993 through December 31, 1993, in Monroe County, which is within

the Southern District of Illinois, the defendant,

RICHARD A. TROST,

the elected clerk of Monroe County, Illinois, a local governmental entity, which received in calendar year 1993 federally-funded benefits in excess of $10,000, did embezzle in excess of $5,000 that was owned and under the care, custody and control of the Monroe County Clerk's Office; all in violation of Title 18, United States Code, section 666.

COUNT 13
(Embezzlement)

28) From within the period of January, 1, 1992 through December 31, 1992, in Monroe County, which is within the Southern District of Illinois, the defendant,

RICHARD A. TROST,

the elected clerk of Monroe County, Illinois, a local governmental entity, which received in calendar year 1992 federally-funded benefits in excess of $10,000, did embezzle in excess of $5,000 that was owned and under the care, custody and control of the

Monroe County Clerk's Office; all in violation of Title 18, United States code, section 666.

COUNT 16
(Embezzlement)

29) From within the period of January 1, 1991 through December 31, 1991, in Monroe County, which is within the Southern District of Illinois, the defendant,

RICHARD A. TROST,

the elected clerk of Monroe County, Illinois, a local governmental entity, which received in calendar year 1991 federally-funded benefits in excess of $10,000, did embezzle in excess of $5,000 that was owned and under the cars, custody and control of the Monroe County Clerk's Office; all in violation of Title 18, United States Code, Section 666.

COUNT 17
(Forfeiture)

30) The allegations of Counts 6 through 11, inclusive, of this Indictment are realleged and by this reference fully incorporated herein for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 18, United States Code, Section 982.

31) As a result of the offenses alleged in Counts 6 through 11, RICHARD A. TROST shall forfeit to the United States all property, real and personal, involved in the aforestated offenses and all property traceable to such property,. including, but not limited to:

A) Real property commonly known as 3971 Ahne Road, Waterloo, Illinois, and more particularly described as follows:

A tract of land being part of Tax Lot 6 of Section 10, Township 3 South, Range 10 West of the Third Principal

Meridian, Monroe County, Illinois, described as follows, to wit:

Beginning at an iron pipe at the Northeast corner of Tax Lot 6; thence South 56 degrees 26 minutes 02 seconds West 326.28 feet to an iron post; thence South 77 degrees 41 minutes 16 seconds West 149.80 feet to an iron post: thence South 39 degrees 56 minutes 32 seconds West 265.33 feet to an iron post thence South 19 degrees 13 minutes 36 seconds East 165.31 feet to a spike in the center of Ahne Road; thence along the centerline of Ahne Road the following courses: North 63 degrees 35 minutes 48 seconds East 60.o feet, North 67 degrees 50 minutes 00 seconds East 85.13 feet, North 78 degrees 01 minutes 17 seconds East 76.37 feet, North 85 degrees 14 minutes 13 seconds East 45.79 feet, South 70 degrees 01 minutes 53 seconds East 93.27 feet, South 57 degrees 11 minutes 11 seconds East 251.76 feet and South 81 degrees 42 minutes 30 seconds East 4. 55 feet to a spike in the East line of Tax Lot 6; thence along the East line of Tax Lot 6, North 1 degree 56 minutes 54 seconds West 662.73 feet to the Point of Beginning and containing 560.0.,acres,

Subject to the rights of the public in Ahne Road and to such other easements, restrictions and conditions as may be of record. Situated in the County of Monroe and State of Illinois.

B) Personal property listed below:

$104,000 in United States currency and all interest and proceeds traceable thereto, in that such sum in aggregate is property which was involved in the aforestated offenses or is traceable to such property, in violation of Title 18, United States Code, Sections 1956, 1957 and 982.

1990 Bronco II Carry-All VIN 1FMCU14T2LUA88697

1987 GMC Vandura Van VIN IGDEG25H9H7503651 (traded on Bronco)

1983 Chevrolet S-10 Pick-up VIN 1GCCSI4B7D2119151

32) RICHARD A. TROST has transferred his interest in the real and personal property described above to Yvonne Trost, but such transfers were for less than adequate consideration and were done with the intent to hinder and delay the forfeiture proceedings of the United states, and, as such, the transfers are null and void and of no effect.

33) Substitute Property:

If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third person;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982 (b) (1) (A), to seek forfeiture of any other property of said defendant up to the value of the property described above as being subject to forfeiture. Such substitute property includes, but is not limited to, any property alleged to be forfeitable in paragraph 31 of this Forfeiture Allegation.

All pursuant to Title 18, United States Code, Section 982.

A TRUE BILL

/s/ ARLENE F. AGNEW
Deputy Foreperson

/s/ H. CHARLES GRACE
United States Attorney

Recommended Bond: $100,000 secured

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Cause No. 95-30135-WDS

UNITED STATES OF AMERICA,
Plaintiff,

v.

RICHARD A. TROST,
Defendant.

MEMORANDUM OF DECISION

STIEHL, District Judge:

Richard A. Trost, the defendant in this case, was indicted on 17 counts. Counts 1-5 charge the defendant with mail fraud, in violation of 18 U.S.C. § 1341; Counts 6-11 charge him with money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i); Counts 12-16 charge him with embezzlement, in violation of 18 U.S.C. § 666; and Count 17 seeks the forfeiture of certain assets under 18 U.S.C. § 982.

The defendant knowingly and voluntarily elected to waive trial by jury, and have his case tried by the Court pursuant to Fed. R. Crim. P. 23(a). The Court proceeded with a bench trial, and after some four days of testimony and more than 1,300 exhibits, the government rested. The defendant then elected not to put on any evidence. Subsequently, he filed a lengthy motion for judgment of acquittal, to which the government responded, and on which the Court has now ruled. The Court is now prepared to make its findings of fact in accordance with Rule 23(c). The Court further incorporates its Memorandum and Order of today's date denying defendant's motion for judgment of acquittal as part of this Memorandum of Decision.

FINDINGS OF FACT

Mail Fraud - Counts 1-5

The Scheme to Defraud

With respect to mail fraud, Counts 1-4, the Court finds beyond a reasonable doubt from the testimony of Eugene Schorb, the outside auditor for Monroe County, Deputy County Clerks Pamela L. Monroe, and Pamela K. Neumeyer, former Deputy County Clerk Laverna F. Mueller, and Monroe County maintenance man Norman C. Hooten, and from corroborating exhibits, that the defendant had initiated a scheme whereby he would personally assign copier code numbers to outside volume users, and would then, usually on a monthly or bi-monthly basis, send users their bills through the United States mail. Also, usually, but not always, these bills were paid by the users sending their checks through the United States mail to defendant's office.

The defendant had instructed his deputies, and Hooten, who distributed the mail to his office, that all mail was to be deposited on the defendant's desk. The defendant would then open and distribute the incoming mail among the appropriate' deputies, retaining the checks issued in payment of the copying bills for deposit in a "special account" he had set up at the State Bank of Waterloo in the name of Richard A. Trost Special Account, Number 120456. The address on this account bore the defendant's home address and his social security number, rather than his office address in the Monroe County Courthouse and the county's taxpayer identification number. (Gov. Ex. 23c). Schorb testified, and the Court Finds, that this was not an official account.

Payments for copies received over-the-counter by the deputies were deposited in the State Bank of Waterloo in a regular account maintained in the name of Richard A. Trost, County Clerk, Account No. 101508. The address on this account was the Court House, Waterloo, Illinois, and bore the county tax identification number. (Gov. Ex. #23).

When the defendant expected to be absent from his office for a day or more, the deputies were told to open only the mail that appeared to contain documents for recording, or that needed immediate attention, but not to open the remaining mail.

With respect to Count 5, also a mail fraud count, the Court finds beyond a reasonable doubt, from the testimony of Schorb, and certain corroborating exhibits, that the defendant had also devised a scheme in his capacity as the election authority for Monroe County, to submit invoice vouchers for reimbursement for election judge expenses through the United States mail to the Illinois State Comptroller, who, in turn, would cause a state check or draft to be issued and sent through the United States mail to the defendant, who on receipt would deposit the check or draft in his "special account."

With respect to Count 1, the Court finds beyond a reasonable doubt, that the defendant placed an invoice for copies to Thouvenot, Wade & Moerchen, Inc.. for $113.00 in the United States mail on or about February 1, 1995 (Ex. #1322), and that thereafter, the defendant caused Thouvenot, Wade & Moerchen, Inc. to place a check payable to Richard Trost, County Clerk, in the amount of $113.00 in payment of said invoice in the United States mail on or about February 21, 1995 (Ex. #596).

The Court further finds, beyond a reasonable doubt, that the defendant thereafter stole or embezzled the $113.00 check from Thouvenot, Wade & Moerchen, Inc. dated February 21, 1995, by depositing it in the State Bank of Waterloo on February 23, 1995, in his "special account" #120456 (Ex. #594).

With respect to Count 2, the Court finds beyond a reasonable doubt that the defendant placed an invoice for $132.00 for copies to the O'Fallon Progress in the United States mail on or about February 11, 1995 (Ex. #1323), and that thereafter the defendant caused the O'Fallon Progress to place a check payable to Monroe

County Clerk Richard A. Trost in the amount of $132.00 in the United States mail on or about February 9, 1995 (Ex. #592).

The Court further finds beyond a reasonable doubt, that the defendant thereafter stole or embezzled the $132.00 check from O'Fallon Progress by depositing it in the State Bank of Waterloo on February 14, 1995 in his "special account" #120456 (Ex. 590).

With respect to Count 3, the Court finds, beyond a reasonable doubt that the defendant placed an invoice for $169.00 for copies to Columbia Title Company in the United States mail on or about September 1, 1994 (Ex. #1324), and that thereafter the defendant caused the Columbia Title Company to place a check payable to Richard A. Trost, County Clerk, in the amount of $169.00 in the United States mail on or about September 12, 1994 (Ex. #559).

The Court further finds, beyond a reasonable doubt, that the defendant thereafter stole or embezzled the $169.00 check from Columbia Title Company by depositing it in the State Bank of Waterloo on September 21, 1994 in his "special account" #120456 (Ex. 557).

With respect to Count 4, the Court finds beyond a reasonable doubt that the defendant placed an invoice for $288.00 for copies to Traughber, Reitz and Morris in the United States mail on or about October 3, 1994 (Ex. #1325), and an invoice for $98.00 for copies to Traughber, Reitz and Morris in the United States mail on or about November 2, 1994 (Ex. #1326), and that thereafter the defendant caused Traughber, Reitz and Morris to place a check in payment of both invoices, payable to the Monroe County Recorder of Deeds in the amount of $386.00 in the United States mail on or about November 15, 1994 (Ex. #573).

The Court further finds beyond a reasonable doubt, that the defendant thereafter stole or embezzled the $386.00 check from Traughber, Reitz and Morris by depositing it in the State Bank of

Waterloo on November 29, 1994 in his "special account" #120456 (Ex. 572).

With respect to Count 5, the Court finds beyond a reasonable doubt that the defendant placed an invoice voucher for $1,350.00 for reimbursement for election judges expenses to the Illinois State Comptroller in the United States mail on or about March 30, 1994 (Ex. #1250A), and that thereafter the defendant caused the Illinois State Comptroller and State Treasurer to place a check payable to Richard A. Trost, Monroe County Clerk, in the amount of $1,350.00 in the United States mail on or about March 30, 1994 (Ex. #498).

The Court further finds beyond a reasonable doubt, that the defendant thereafter stole or embezzled the $1,350.00 check from the Illinois State Comptroller and State Treasurer by depositing it in the State Bank of Waterloo on April 7, 1994 in his "special account" #120456 (Ex. #494).

Money Laundering: Counts 6-11

The Court finds beyond a reasonable doubt from all the evidence in the case that the defendant used two principal schemes to accomplish his purpose of stealing and embezzling public Funds from Monroe County:

Mail Fraud Scheme - In this scheme he placed checks in payment of copying fees received through the mail in a special account (Acct. #120456) he maintained in the State Bank of Waterloo for his own personal use. Certain otherchecks, such as State of Illinois election judge reimbursement checks were also placed in this account. The details of this scheme are set forth in more detail in the mail fraud section above.

Altered Check Scheme - In this scheme, as explained by Schorb, Sheriff Dan Kelley, and Donald Broughton, the defendant would write a check on a regular county clerk account

(#101508) to a regular county supplier of computers and computer supplies, Donald Broughton. This check would not be delivered to Broughton, or negotiated, as reflected by the lack of bank markings on the check. The defendant would then issue another check in the same amount on the same account to himself This check would bear the same date, but have a check number 100 numbers higher.

For example, on April 1, 1993, the defendant wrote check number 211 on account number 101508 to Donald Broughton (Ex. #9) in the amount of $5,000. This check was neither received nor negotiated by Broughton, nor anyone else. That same day, the defendant wrote check number 311 for $5,000 to himself on the same account (Ex. #21). Also on April 1, 1993, he deposited this check, along with three checks received in payment for copy fees (Exs. #21A, #21B, #21C), for a total deposit of $5,105 in his personal "special account" (Ex. #21D). To cover up this transaction, the defendant then altered the April 1993 bank statement for account #101508 to show check number 211, rather than 311, was negotiated (Exs. #17, #18).

The Court also Finds beyond a reasonable doubt from all the evidence, that the defendant made a series of monetary transfers to cover up his unlawful activities, e.g. mail fraud, or embezzling funds from a governmental entity receiving benefits in one year of more than $10,000 under a federal program. The Court also finds that the defendant applied certain of these funds to his personal gain. After depositing the proceeds of his unlawful activity in his personal "special account," the defendant would then write a check on that account to himself, and deposit it in a joint account in his name and that of his wife. The defendant would then write a check out of that joint account to another financial institution to make payments on the real estate mortgage on the resident of the defendant and his wife. A variation on that scheme is found in the transactions giving rise to Count 11, where tile defendant wrote two checks out of the "special

account" directly to a financial institution for payment on two personal vehicle loans.

The Court further finds beyond a reasonable doubt and from all the evidence that all of the accounts involved bore the defendant's name, all of the checks on those accounts bore his signature, and that there was no evidence of forgery.

The Court further finds beyond a reasonable doubt that with respect to each of Counts 6 through 11, the defendant conducted the described financial transactions with the proceeds of an unlawful activity, specifically, mail fraud and embezzlement; that he knew that the money represented the proceeds of an unlawful activity that constituted a felony; and that the defendant specifically designed these financial transactions to conceal or disguise the true nature, location, source, ownership, or control of the unlawful activity.

With respect to Count 6, the Court finds beyond a reasonable doubt that the defendant embezzled the sum of $5,000 on April 1, 1993, from Monroe County, in the manner set forth in the Altered Check Scheme set forth above, in violation of 18 U.S.C. § 666.

The Court further finds that after making the deposit of $5,105 in the "special account" on April 1, 1993, the defendant then, on that same day, wrote a check to himself for $5,000 out of the "special account" (Ex. #21F), and deposited it that day in a joint account in the First National Bank of Waterloo in the name of Richard A. Trost and Yvonne R. Trost (defendant's wife) (Ex. #21G). The next day, April 2, the defendant wrote a check on the joint account to Commercial State Bank of Waterloo in the amount of $5,166.94 (Ex. #21H) for payment on a real estate loan (Ex. #22). Exhibit 21G also shows that at no time during the month of April 1993 were there sufficient funds in the joint account to cover a check in the amount of $5,166.94, absent the $5,000 deposit of embezzled funds on April 1, 1993.

With respect to Count 7, the Court finds beyond a reasonable doubt from the testimony of Schorb, Kelley, and Broughton, as corroborated by the exhibits, that the defendant engaged in a similar altered check scheme when he wrote check number 232 on county clerk account 101508 to Donald Broughton on January 19, 1994, for $4,000 for "storage disks" (Ex. 7). This check also was neither received by Broughton, nor negotiated by him nor anyone else, as shown by the lack of bank markings on the check. The same day, defendant wrote check 332 on the same account to himself for $4,000 (Ex. #5). He deposited this check, also on January 19, 1994, along with a check received from the State of Illinois in the amount of $1,350 for election judges reimbursement (Exs. #5B, #5C), for a total deposit of $5,350 in his "special account" (Exs. #5A, #5D). The real and altered bank statements for account #105108 for January 1994 (Exs. #2, #3) show defendant followed the same procedure of altering Exhibit 3 to make it appear that check number 232, rather than 332, was negotiated.

The Court further finds that after depositing the $5,350 in the "special account" on January 19, 1994, defendant the same day wrote a check to himself for $4,000 out of the "special account" (Ex. #5E), which he deposited on January 19, 1994, in his joint account with his wife (Ex. #5F).

From the joint account, still on January 19, 1994, defendant wrote a check to Commercial State Bank in the amount of $4,443.75 (Ex. #5G) in payment on a real estate loan (Exs #6, #6A). Exhibit 5F also shows that at no time during the month of January 1994, were there sufficient funds to cover a check in the amount of $4,443.75, absent the., deposit of embezzled funds on January 19, 1994.

With respect to Count 8, the Court finds, beyond a reasonable doubt, from the testimony of Schorb, Kelley and Broughton, as corroborated by the exhibits, that the defendant engaged in still

another altered check scheme on January 13, 1993, when he wrote check number 206 on county clerk account number 101508 to Donald Broughton for $5,000 for "programming" (Ex. #12). This check was neither received by Broughton, nor negotiated by him, nor anyone else, as shown by the lack of bank markings on the check. The same day, defendant wrote check number 306 on the 101508 account to himself in the amount of $5,000 (Ex. #13).

He then deposited this check the same day, along with two checks received in payment for copy, or recording fees (Exs. #13A, #13B), for a total deposit of $5,5156 in the "special account" #120456 (Exs. #13C, #13D). The real and altered bank statements for account #101508 for January 1993 (Exs. #14, #15) show defendant followed the same procedure of altering exhibit 14 to make it appear that check number 206, rather than 306, was negotiated.

The Court further finds that after depositing the $5,156 in the "special account" on January 13, 1993, defendant the same day wrote a check to himself in the amount of $5,000 out of that account (Ex. #13E), which he deposited on January 13, 1993 in the joint account (Ex. #13F).

From that joint account, still on January 13, 1993, defendant wrote a check to Commercial State Bank in the amount of $5,166.94 (Ex. #13G) for payment on a real estate loan (Ex. #13H). At no time during the month of January 1993 were there sufficient funds on deposit in the joint account to cover a check in the amount of $5,166.94, absent the deposit of embezzled funds on January 13, 1993 (Ex. #13F).

With respect to Count 9, the Court finds, beyond a reasonable doubt, from the testimony of Schorb and Kelley, as corroborated by exhibits, that the defendant wrongfully took $3,000 of Monroe County funds when he wrote a check to himself on April 2, 1992, out of the Monroe County Clerk account #101508 in the

amount of $3,000 (Ex. #30), which he deposited in his "special account" #120456 on April 3, 1992 (Exs. #30A, #31).

Also on April 3, 1992, defendant wrote another check to himself in the amount of $3,000 (the exact amount of county funds he had embezzled from account #101508) out of his "special account" #120456 (Ex. #33), and deposited it, along with two other apparently legitimate payroll checks (Ex. #33B), for a total net deposit of $4,300 in the joint account (Ex. #33A).

On April 2, 1992, at a time when there was a balance of only $2,768.90 in the joint account (Ex. #33C), the defendant wrote a check payable to Commercial State Bank in the amount of $5,166.94 (Ex. #33D), which was applied to the real estate loan on the residence of defendant and his wife on April 3, 1997 (Ex. #33E).

With respect to Count 10, the Court finds, beyond a reasonable doubt, from the testimony of Schorb and Kelley, and the corroborating exhibits, that the defendant wrongfully took Monroe County funds when he wrote a check to himself out of the Monroe County Clerk account #101508 in the amount of $5,000 on January 3, 1992 (Ex. #27), which he deposited in his "special account" #120456 on the same day, along with a check received for copying fees, for a total deposit of $5,027 (Exs. #28, #28A).

From his "special account" #120456, defendant once again wrote a check to himself the same day for $5,000 (Ex. #29A), which he deposited January 4, 1992, along with a personal check, in the joint account for a total net deposit of $5,100 (Exs. #29B, #29C).

Following the same pattern, the defendant then wrote a check, also on January 3, 1992, to the Commercial State Bank in the amount of $5,166.94 (Ex. #29E), which was applied to the real estate loan on the residence of defendant and his wife on January 6, 1992 (Ex. #29F).

Without the deposit of $5,100 on January 4, 1992, at no time during the period December 10, 1991, to January 9, 1992, would there have been sufficient funds in the joint account of defendant and his wife to cover a check in the amount of $5,166.94.

With respect to Count 11, the Court finds, beyond a reasonable doubt, from the testimony of Kelley, and the corroborating exhibits, that the defendant wrongfully took Monroe County Funds when he wrote a check on the Richard Trost Recorder account #132268 in the amount of $1,000 on March 29, 1991 (Ex. #42), and deposited it the same day in his "special account" #120456, along with five checks totaling $268.00 received in payment of county clerk or recorder fees, for a total deposit of $1,268 (Exs. #44, #44A, #44B, #44C, #44D, #44E),

Varying his pattern, the defendant then wrote a check the same day out of his "special account" #120456 to the State Bank of Waterloo in the amount of $1,318.11 (Ex. #44H), which was applied directly to loans made for the purchase of two of defendant's personal vehicles (Exs. #44I, #44J, #44K). Without the deposit of $1,268 on March 29, 1991, at no time during the month of March 1991, would there have been sufficient funds in "special account" #120456 to cover a check in the amount of $1,318.11 (Ex. #44G).

Embezzlement: Counts 12-16

The Court finds, as more fully set out in the Order denying defendant's motion for judgment of acquittal, that defendant, as County Clerk, was beyond a reasonable doubt the agent of the local government, specifically Monroe County, Illinois, in accordance with the provisions of §666.

Further, the Court finds, beyond a reasonable doubt, from the testimony of Merrill Prange, County Treasurer of Monroe County, and certain exhibits admitted into evidence, that Monroe County received benefits under various federal programs in each of the years 1991-1995, as follows:

1995	$4,420,883.55	(Ex. #1327)
1994	4,866,014.86	(Ex. #1328)
1995	4,420,883.55	(Ex. #1327)
1994	4,866,014.86	(Ex. #1328)
1993	668,450.26	(Ex. #1329)
1992	75,000.52	(Ex. #1330)
1991	452,831.46	(Ex. #1331)

The defendant has argued that because certain of those funds were disbursed to other governmental entities, e.g. Village of Fults, Fountain Water District, and Harrisonville Levee District, they should not be included in the totals of "benefits" received by Monroe County. Without deciding this issue, but giving the defendant the benefit of the doubt, the Court finds, nonetheless, that Monroe County received benefits in excess of $10,000 in each of the years 1991-1995 as follows:

1995	$4,420,883.55	
	-52,346.70	- Village Of Fults
	$4,368,536.85	
1994	$4,866,014.86	
	-656,075-00	- Village of Fults
	-128,752.25	- Fountain Water District
	$4,101,187.61	
1993	$ 668,450.26	
	-226,611.00	- Fountain Water District
	$ 401,839.26	
1992	$ 75,000.52	
	-1,714.75	- Fountain Water District
	$ 73,285.77	

1991	$ 452,831.46	
	-2.925.00	- Fountain water District
	-400,000.00	- Harrisonville Levee District
	$ 49,906.46	

The Court further finds, beyond a reasonable doubt, that these funds were under the care, custody or control of Monroe County, Illinois, and the defendant embezzled or stole more than $5,000 from Monroe County in each of the years 1991 through 1994.

With respect to Count 12, which relates to the period January 1, 1995, to December 18, 1995, the Court finds that the government failed to prove beyond a reasonable doubt that the defendant embezzled funds in excess of $5,000 for that year. There was evidence, primarily from Special Agent Tyrone K. Forte of the Federal Bureau ofInvestigation, that he saw a computer in defendant's home at the time of the execution of a search warrant, and that the defendant stated that the computer was his, but that he had not yet paid for it. Donald Broughton testified that he bad not sold a computer to the defendant in either his personal or individual capacity. However, he testified that the computer shown in photos taken at defendant's residence (Exs. #1299, #1300), looked like one he had sold Monroe County, which he recognized by certain distinctive features.

Defendant, who presented no evidence, argues that he had merely taken the computer home to use it there on county business. This is an argument better not made, particularly in liplit of what he told S/A Forte at the time the search warrant was executed.

However, the government produced no evidence to specifically identify the computer as one sold by Broughton to Monroe County. For example, no evidence was presented as to the serial or other identifying number. Without more, the Court is unable to find beyond a reasonable doubt that the defendant embezzled more than $5,900 during the period charged in Count 12.

With respect to Count 13, which relates to calendar year 1994, the Court finds beyond a reasonable doubt from the testimony of Schorb and Kelley, and Exs. #5, #5A, that the defendant embezzled $4,000 when he wrote a check on the County Clerk Fee account #101508 payable to himself (Ex. #5), and deposited it in his "special account" (Ex. #5A). The manner in which this transaction was handled is detailed in the findings of fact on the money laundering accounts.

The Court also finds beyond a reasonable doubt from the testimony of Schorb, Prange and Stan Weder of the Illinois State Comptroller's office, and Exs. #5A, #5B, #5C, #5D, that the defendant embezzled an additional $1,350.00 when he deposited at the same time a State of Illinois check for $1,350.00 in his "special account." This check was issued in payment of an invoice voucher (Ex. #5C) from defendant for reimbursement of election judge expenses by the county. Clearly, these were public funds, rather than personal funds of the defendant, and there is no evidence to show that he was entitled to them.

The Court also finds beyond a reasonable doubt from the testimony of Eileen Traughber, and certain exhibits, that the defendant deposited checks received in payment for copy fees (Exs. #485, #486, #487) into his "special account" (Ex. #484). These are checks that were, in payment of office fees, and defendant was not personally entitled to them.

The amount embezzled by defendant in 1994 was thus $6,807.00, which exceeded the $5,000 statutory minimum for that year.

With respect to Count 14, which relates to calendar year 1993, the Court finds beyond a reasonable doubt from the testimony of witnesses, as corroborated by the government's exhibits, that the defendant embezzled $5,000 on January 13, 1993, when he wrote a check payable to his order in that amount on his regular county account #101508 (Ex. #13), and deposited it the same day

in his personal "special account" #120456 (Ex. 13C). The defendant wrote a similar check on April 1, 1993, on the county account payable to himself in the amount of $5,000 (Ex. #21), which he deposited the same day in his personal "special account" #120456 (Ex. #21D). These two transactions are set forth with more specificity in the Court's findings on the money laundering counts.

In addition to this $10,000, the Court finds beyond a reasonable doubt that the defendant embezzled an additional $16,628 during calendar 1993, when he deposited more than 80 checks totalling $16,628 in his personal "special account" #120456 (Exs. #342-456).

The amount embezzled by the defendant in calendar year 1993 was thus $26,628.00, which clearly exceeded the $5,000 statutory minimum for that year.

With respect to Count 15, which relates to calendar year 1992, the Court finds beyond a reasonable doubt from the testimony of the witnesses, as corroborated by the government's exhibits, that the defendant embezzled $5,000 on January 3, 1992, when he wrote a check payable to himself in that amount on his regular county account #101508 (Ex. #27), and deposited it the same day in his personal "special account" #120456 (Ex. #28). The defendant wrote a similar check on April 3, 1992, on county account #101508 in the amount of $3,000 (Ex. #30), which he deposited the same day in his personal "special account" #120456 (Ex. #31). These two transactions are also set forth with more specificity in the Court's findings on the money laundering counts.

The Court finds beyond a reasonable doubt that the defendant embezzled an additional $8,108.00 during calendar 1992, when he deposited more than 75 checks, totalling $8,108.00 in his personal "special account" #120456 (Exs. #147-242).

The amount embezzled by the defendant in calendar 1992 was thus $16,108.00, which clearly exceeded the $5,000 statutory minimum for that year.

With respect to Count 16, which relates to calendar year 1991, the Court finds beyond a reasonable doubt from the witnesses as corroborated by the government's exhibit that the defendant embezzled $1,000 on March 28,1991, when he wrote a check payable his order on county account #133268 (Ex. #42), and deposited it the same day in his "special account" #120456 (Ex. #44).

The defendant also stole two State of Illinois checks, one dated May 9, 1991, in the amount of $750.00, and the other dated November 22, 1991, in the amount of $1,150.00, election judge reimbursements (Exs. #167, #229), by depositing them in his "special account" #120456 on May 14, 1991, and November 26, 1991, respectively (Exs. #161, #228).

Also in 1991, the defendant embezzled $1,122.00 when he stole checks which came from the law firm of Traughber & Reitz, Ltd. for payment of fees for copies (Exs. #149, #163, #168, #195, #209, #219, #223, #234). These checks were all deposited in defendant's "special account" #120456 within a few days of their receipt (Exs. #147, #166, #167, #193, #208, #218, #222, #231).

The Court further finds, beyond a reasonable doubt, that in addition to these sums, the defendant embezzled an additional $1,402.00 during calendar 1991 when he deposit approximately 14 checks, received from various entities in payment of fees for copies, in personal "special account" #120456 (Exs. #150, #151, #160, #169, #186, #189, #200, #202, #203, #206, #227, #233, #235, $240; *see also* Exs. #147, #159, #166, #185, #198, #205, #222, #231, #238).

The amount embezzled by the defendant in calendar 1991 was thus $5,424.00, which exceeded the $5,000 statutory minimum

for that year.

Having made these special findings of fact, the Court now makes the following general findings:

Mail Fraud: Counts 1-5

To establish the crime of mail fraud in violation of 18 U.S.C. § 1341, the government must prove beyond a reasonable doubt, that:

1. The defendant devised a scheme or artifice to defraud; and

2. That the defendant caused a writing to be placed in the United States mail in furtherance of said scheme or artifice.

Based on the Court's special findings of fact as to the Scheme to Defraud, and as to Counts 1-5, the Court makes the general finding that the government has proved both of these essential elements of mail fraud under 18 U.S.C. § 1341 beyond a reasonable doubt, and, accordingly, finds the defendant RICHARD A. TROST, GUILT beyond a reasonable doubt of mail fraud in violation of 18 U.S.C. § 1341, as charged in each of Counts 1 through 5.

Money Laundering: Counts 6-11

To establish the crime of money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i), the government must prove beyond a reasonable doubt, that:

1. The defendant conducted or attempted to conduct a financial transaction, or caused another to do so;

2. The currency used in the financial transaction in fact involved the proceeds of an unlawful activity;

3. The defendant knew that the currency represented the proceeds of some sort of activity that constitutes a felony under state of federal law; and

4. The defendant knew that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the unlawful activity.

Based on the Court's special findings of fact as to the Mail Fraud and the Altered Check Scheme, and as to Counts 6-11, the Court makes the general finding that the government has proved all of the essential elements of money laundering under 18 U.S.C. § 1956(a)(1)(B)(i) beyond a reasonable doubt, and, accordingly, finds the defendant RICHARD A. TROST, GUILTY beyond a reasonable doubt of mail fraud in violation of 18 U.S.C. § 1956(a)(1)(B)(i) as charged in each of Counts 6 through 11.

Embezzlement: Counts 12-16

To establish the crime of embezzlement, in violation of 18 U.S.C. § 666, the government must prove beyond a reasonable doubt that:

1. The defendant was an agent of a state or local government which received in excess of $10,000 in federal funding in any one year period;

2. The defendant embezzled or stole in excess of $5,000 from that government; and

3. The funds embezzled or stolen were under the care, custody, or control of such government.

Based on the Court's special Findings of fact as to embezzlement, and as to Counts 13 through 16, the Court makes the general finding that the government has proved all the essential elements of embezzlement under 18 U.S.C. § 666 beyond a

reasonable doubt, and, accordingly, finds the defendant RICHARD A. TROST, GUILTY beyond a reasonable doubt of embezzlement in violation of 18 U.S.C. § 666, as charged in each of Counts 13 through 16 of the indictment.

The Court further makes the general finding, based on the Court's special findings of fact as to embezzlement, and as to Count 12, that the government has failed to prove the defendant stole or embezzled funds in excess of $5,000 from Monroe County in the period January 1, 1995, to December 18, 1995, and thus failed to meet its burden of proving all the essential elements of embezzlement under 18 U.S.C. § 666 beyond a reasonable doubt. Accordingly, the Court finds the defendant RICHARD A. TROST, NOT GUILTY of embezzlement as charged in Count 12 of the indictment.

DATED: 20 August 1997

/s/ William D. Stiehl
DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Cause No. 95-CR-30135-WDS

UNITED STATES OF AMERICA,
Plaintiff,

v.

RICHARD A. TROST,
Defendant.

MEMORANDUM & ORDER

STIEHL, District Judge:

This matter is before the Court on defendant's motion for judgment of acquittal. This matter was tried before the Court without a jury. At the conclusion of the government's evidence, the Court took the case under advisement to permit the defendant to file his motion for judgment of acquittal, to which the government has responded. The defendant did not put on any evidence at trial. The crux of defendant's motion is that the evidence does not support the crimes charged in the indictment. Defendant is charged in Counts 1 through 5 with mail fraud, in violation of 18 U.S.C. §1341, in Counts 6 through 11 with money laundering in violation of 18 U.S.C. §1956(a)(1)(B)(i), and in Counts 12 through 16 with embezzlement in violation of 18 U.S.C. §666.

BACKGROUND

A. *Judgment of Acquittal*

Fed. R. Crim. P. 29 provides in pertinent part: "The Court on motion of a defendant or of its own motion shall order the entry of Judgment of acquittal of one or more offenses charged in the

indictment . . . after the evidence on either side is closed, if the evidence is insufficient to sustain a conviction of such offense or offenses." The defendant seeks acquittal on all counts, arguing both the law and the evidence at trial. Because this matter was heard by the Court, without a jury, the Court will address the merits of defendant's motion in this Memorandum and Order.

1. *Mail Fraud: Counts 1-5*

To "sustain a conviction under the federal mail fraud statute, the government must introduce evidence sufficient to establish the 'use of the mails in furtherance of a fraudulent scheme.'" *United States v. Laurenzana*, 113 F.3d 689, 693 (7th Cir. 1995), quoting *United States v. Hickock* 77 F.2d 992, 1003 (7th Cir.), *cert. denied*, 116 S.Ct. 1701 (1996). The *Laurenzana* court noted:

> [T]his Court reads the "in furtherance" requirement of the mail fraud statute broadly. United States v. Koen, 982 F.2d 1101, 1107 (7th Cir. 1992). The mailings need not be an essential part of the scheme, but they must be incident to an essential part of the scheme. *See Schmuck v. United States*, 489 U.S. 705, 710-11[(1989)]. The mailings must be "sufficiently closely related" to the illegal scheme so that it can be said that they furthered its accomplishment. See Koen 982 F.2d at 1107.

113 F.3d at 694.

In this case, the indictment charges that the defendant used the mail as part of his scheme to defraud. Specifically, the manner and means part of the indictment for Counts 1 through 5 charges that the defendant, as County Clerk of Monroe 'County, had control over certain billings for copying services performed by the County Clerk's Office that were mailed to individuals companies, corporations, and financial institutions.

The evidence presented at trial established that defendant devised a scheme or artifice whereby he would personally assign an account number to customers for copying costs, send out monthly statements through the United States Mail to volume purchasers of document copies from his office. All mail coming into his office was ordered placed unopened on his desk, which he would personally sort, and have distributed among his deputy clerks. If thedefendant was absent for a day or more, his staff was only permitted to open that mail which required immediate attention, such as the recording of documents, and the rest of the mail remained on his desk until he returned. In this way, he was able to extract the checks submitted in payment of the copying bills, and proceed with the remainder of his scheme which included depositing those amounts in a "special account," and then transferring these funds to a personal joint account with his wife. From the joint account, defendant would then contemporaneously write checks to cover certain personal financial obligations. The evidence established that due to defendant's control over the billings, and control over the receipt of the official mail at his office, he was able to steal certain checks, deposit them in a bank account designated as a "special account," and use the money for his personal, rather than County, expenses. Defendant's control over the incoming and outgoing mailings was critical to his scheme. As Deputy County Clerk Pamela Monroe testified, if payment on a copy bill was brought to the counter, a receipt would be issued and the payment would be placed in a drawer to be deposited into account #101508, the account held in the name of Trost as County Clerk. (Ex. 23). However, she was not permitted to open the mail and did not issue receipts for payments mailed to the office. That was the sole province of the defendant.

Defendant asserts that because he mailed legitimate bills for legitimate fees and charges of the Clerk's office, these mailings were not "use of the mail" as defined in 18 U.S.C. § 1341. Defendant cites to the case of *Parr v. United States*, 363 U.S. 370, 385 (1960), where the Supreme Court held that the mailing

in question was "immaterial" to the scheme. Id. at 393. However, as the Supreme Court recognized in *Schmuck v. United States*, 489 U.S. 705, 714 (1989), "the credit card invoice mailings in Parr ... involved little more than post-fraud accounting among the potential victims of the various schemes, and the long-term success of the fraud did not turn on which of the potential victims bore the ultimate loss." *Id.* Further,"[t]o the extent that Schmuck would draw from...previous cases a general rule that routine mailings that are innocent in themselves cannot supply the mailing element of the mail fraud offense, he misapprehends this Court's precedents." *Id.* at 714-15. The Schmuck Court further noted: "In Parr, the Court specifically acknowledged that 'innocent' mailings—ones that contain no false information—may supply the mailing element." *Id.* at 715, *citing Parr*, 363 U.S. at 390.

Further:

> The relevant question at all times is whether the mailing, is part of the execution of the scheme as conceived by the perpetrator at the time, regardless of whether the mailing later, through hindsight, may prove to have been counterproductive and return to haunt the perpetrator of the fraud. The mail fraud statute includes no guarantee that the use of the mails for the purpose of executing a fraudulent scheme will be risk free. Those who use the mails to defraud proceed at their peril.

Schmuck, 489 U.S. at 715. Here, the mailings in question although "innocent" in one sense, were an essential part of and integral to the scheme, and thereby satisfy the statute. Defendant would have this Court Find that because these mailings Were part of the normal course of the business of the Clerk's office, they cannot constitute the mailing required for the mail fraud charges. But the evidence clearly established that "the mailing [was] part of the execution of the scheme as conceived" by the

defendant, and that the mailings played an "essential role" in the scheme. *United States v. Green*, 786 F.2d 247, 249 (7th Cir. 1986).

As the Seventh Circuit noted in *Green*, in *Parr* the government had failed to establish that the mailings were tied to the scheme to defraud. 786 F.2d at 250. "The Court [in *Parr*] emphasized not only the 'imperative command of duty' but also the prosecutor's neglect to tie the mailings to the success of the scheme Id. Further, "Par r and it' er cases require that the government prove that legally-required mailings were important to the successful execution of the fraud." *Id.*

Here, like in *Green*, the government has established that defendant "used the mails with the intent" to embezzle the money which came from those who responded to the notices. *Id.* The evidence was, and the Court FINDS, that defendant set up, controlled, and was solely. responsible for the billing procedures, including the mailing of the bills from his office, the receipt of the payments, the restrictions on who was permitted to open the mail, and the use of the "special account," all as part of a well orchestrated scheme to defraud. This control was not the common control or oversight of an office manager who implements policies and procedures which his staff is to follow in dealing with matters related to the office. Rather, defendant's control was absolute. Only he was allowed to give out account numbers; only he was as allowed to generate certain bills; only he could open the mail; only he had access to the checks that were the result of the billings; and only he deposited those checks. This control was central to his ability to convert the incoming checks to his personal use.

The mailings in this case certainly were not just innocent mailing integral to defendant's entire scheme. The Seventh Circuit stated in *United States v. Hickock*, 77 F.3d 992, 1004 (7th Cir. 1996):

> The "use of the mails" element is satisfied if a defendant "knowingly cause[s] the mails to be used in furtherance of a scheme to defraud." [*United States v.*] *Brocksmith*, 991 F.2d [1363,] 1367 [(7th Cir. 1993)]. According to the Supreme Court, "[w]here one does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can be reasonably foreseen, even though not actually intended, then he 'causes' the mails to be used" for purposes of the mail fraud statute. *Pereira v. United States*, 347 U.S. 1, 8-9 (1954).

Here billings were for legitimate copy expenses, and therefore, appeared "innocent." However, the controlled mailing of the bills by Trost was the first step in his scheme to defraud. Mail fraud is a "specific intent crime." 773 F.3d at 1003. The evidence was that at the time he caused the bills to be mailed to the various recipients as charged in the indictment, defendant intended to convert at least some of the money received therefrom to his own use by causing those payments to be placed into the "special account," rather than into the County Clerk's account.

The defendant asserts that the government failed to establish that he was not entitled to compensation from the "special account," or that his salary was not paid from that account. This argument is neither supported by the evidence, nor the law. As the Court previously noted, the government has established beyond a reasonable doubt the elements of mail fraud. This "straw man" argument of a possible reimbursement or salary explanation for these payments is simply not supported by the evidence.

Defendant's arguments that he had authority to set up the account, to make deposits to the account, and that legitimate office expenses were properly paid out of this "special account," do not rebut the mail fraud evidence, but rather, enhance it. It is precisely because the defendant had the authority to set up this

"special account" and to restrict access to it which allowed him to create the scheme to steal the county money. Moreover, to the extent that there was any payment of legitimate office expenses out of this account, this activity supports the "concealment" element of the related money laundering charges in Counts 6-11, and does not alter the fact that the defendant created the mailing, billing and deposit scheme to steal money from the county. Finally, the defendant's argument that there was no evidence that the receipts of the copy fees were not reported to the county is not a defense to the evidence that the defendant created a scheme to defraud the county, and was successful in this scheme to defraud for a number of years.

Accordingly, defendant's motion for judgment of acquittal on the mail fraud counts is DENIED.

2. *Money Laundering: Counts 6-11*

In Counts 6 through 11, defendant is charged with money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i), by conducting financial transactions designed to conceal the proceeds of an unlawful activity. The money laundering statute provides, in pertinent part:

> (a)(1) Whoever, knowing that the properly involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—
>
> . . .
>
> (B) Knowing the transaction is designed in whole or in part—
>
> (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity. . . .

Id.

In Counts 6 through 11, the indictment charges that the defendant would cause checks to be deposited in a "special account," and then use those deposits to pay various personal debts. Specifically Counts 6, 7, 8, 9, and 10, charge that the defendant, *inter alia*, caused money from account #101508, the County Clerk's account, to be deposited in account #120456, the "special account," both accounts held at State Bank of Waterloo. In each of these counts, he is then charged with writing checks to himself out of account #120456, and depositing them into account #0192347501, at First National Bank of Waterloo, which was a joint account with his wife. Checks on account #0192347501 were then used to pay his residential loan indebtedness. Each of these transactions occurred over a one or two day time period. Count 11, the last money laundering count, charges that on March 28, 1991, the defendant wrote himself a $1,000 check from account #132268, an account held in Trost's name as County Clerk, which was deposited into account #120456. On the same day, check #256, drawn on account #120456 in the amount of $1,318.11 was paid to State of Bank of Waterloo to make payment on two personal vehicle loans. Each count charges the defendant with causing the financial transaction to conceal and disguise the proceeds of an unlawful activity.

"The offense of money laundering is the act of designing a transaction to conceal or disguise the nature or other identifying features of the property." *United States v. Gabel*, 85 F.3d 1217,1224 (7th Cir. 1996). The government must prove that "(1) [the defendant] took part in a financial transaction involving the proceeds of specified unlawful activity; (2) he knew that the property involved was proceeds of specified unlawful activity; and (3) he knew that the transaction was designed, in whole or in part, to conceal or disguise the proceeds." *United States v. Reynolds*, 64 F.3d 292, 297 (7th Cir. 1995). The defendant asserts that there is no evidence that he ever concealed or disguised the nature, location, ownership or control of the funds.

However, the Seventh Circuit has stated that the "requirement of concealment or disguise can be directed to the nature, location, source, ownership or control of the proceeds." *Id.*

Here, the evidence is that the defendant set-up account #120456 at the State Bank of Waterloo, designated as "Richard A. Trost Special Account," and used that account as a conduit to conceal the stolen county funds. This account, although ostensibly a county account, was in the defendant's name but did not identify him as County Clerk; used the defendant's own social security number, not the County tax I.D. number-, and bore the defendant's home address, not the County Clerk's office address. (See Gov. Ex. 23C). This account was, therefore, markedly different in its nature, character, and form from the other official accounts for the County Clerk. (Ex. 23).

This "special account" was clearly designed to conceal the nature of the stolen funds. The outside auditor for Monroe County, Eugene Schorb testified that the defendant never reported this account as an official Monroe County account. The evidence at trial revealed that the defendant would deposit certain checks into the "special account," and then issue checks out of that account, to be deposited into a personal account on the very same or the next day, to pay personal indebtedness. The funds to cover his substantial residential loan payments were further channeled into a personal account. This activity of moving money through several accounts further supports the money laundering counts.

Moreover, the evidence at trial was that the defendant altered the County Clerk's office account, bank statement #101508, to cover the fact that he had written a $5,000 check to himself (4311), by changing the check numbers from #311 to #211. Check #211 was a check to Donald Broughton for computer costs. That check never cleared the account despite the erroneous appearance from the altered statement. This alteration of checking account statements scheme was repeated two more times.

Accordingly, defendant's motion for judgment of acquittal on the money laundering counts is DENIED.

3. *Embezzlement: Counts 12 - 16*

The defendant asserts that the evidence produced on the embezzlement counts was insufficient to sustain a conviction under 18 U.S.C. § 666. Initially, the defendant claims that the charged conduct is not within the statute. The indictment charges the defendant in Counts 12-16 with embezzlement. The statute specifically provides:

> (a) Whoever, if the circumstances described in subsection (b) of this section exists
>
> > (1) being an agent of an organization, or of a State, local, or Indian tribal government or any agency thereof
> >
> > > (A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that—
> > >
> > > > (i) is valued at $5,000 or more, and
> > > >
> > > > (ii) is owned by, or is under the care, custody, or control of such organization, government or agency;

shall be guilty of an offense against the United States. *Id.* Subsection (b) provides:

> (b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

The statute governing definitions provides:

> (d) As used in this section—
>
> (1) the term "agent" 'means a person authorized to act on behalf of another person or a government and, in the case of an organization orgovernment, includes a servant or employee, and a partner, director, officer, manager, and representative;
>
> (2) the term "government agency" means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established, and subject to control, by a government or governments for the execution of a governmental or intergovernmental program;
>
> (3) the term "local" means of or pertaining to a political subdivision within a State:

Id. The defendant raises several grounds, both legal and factual, for his assertion that he is entitled to acquittal on these counts.

1. The Defendant as an Agent of Monroe County

The indictment charges that the defendant embezzled property and funds in excess of $5,000 that was "owned and under the care custody and control of the Monroe County Clerk's Office. The defendant asserts that he is not governed by the provisions of §666 because he is a constitutional office holder, and therefore, his office is separate and apart from the County. He asserts, therefore, that he does not fall under the statute because he cannot have embezzled from the County, but only from the Office of the County Clerk, an entity legally separate from the County. In support of this, the defendant relies on the case of *Moy v. County of Cook*, 640 N.E.2d 926, 928-31 (Ill., 1994). The Court finds,

however, that this case affords the defendant little help. In *Moy*, the Illinois Supreme Court held that Cook County could not be held "vicariously liable under the doctrine of *respondeat superior* for the alleged negligent conduct of the Cook County sheriff." *Id.* at 776. In determining that the county was not vicariously liable, the Court looked to the relationship of the sheriff to the county and held that as an "officer" of the County, as opposed to an employee, the *respondeat superior* doctrine did not apply. *Id.* at 780. This determination was based, in part, on the duties of the sheriff, and the authority of the county to control the activities of the office of the sheriff, *Id.* at 779, because for respondeat superior liability to attach, there must be a master-servant relationship. As the court noted, "The master's liability is merely by reason of contractual relationship," and "[a]bsent an employment relationship, the doctrine does not apply." *Id.* at 778.

The defendant would have this Court find that the decision of a state court in a state negligence/tort action governs the federal criminal liability of a county clerk. This position is not supported by the plain language of the federal statute itself, as set forth above. Section 666 defines a government agent, for the purposes of federal criminal liability, to include, *inter alia*, an "officer, manager, and representative." The distinction the defendant attempts to draw between a constitutional and non-constitutional officer is simply irrelevant for purposes of a violation of this *federal criminal* statute.[1]

To apply the defendant's position to this statute would be to eviscerate the statute of its effectiveness and meaning. There-

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[1] As *Moy* noted: "Although the designation of one by law as an officer is of some significance, . . .such a designation is not conclusive as to the official or unofficial character of the person. Further *the nomenclature* in a statute designating a person holding a position as an officer or employee *"is not controlling."* *Id.* at 779 (emphasis added).

fore, the Court FINDS that the defendant's contention that the provisions of § 666 do not apply to him in his position as County Clerk to be without merit.

The defendant further asserts that because lie is charged with embezzling from property in the care, custody and control of the Monroe County Clerk's office, the indictment charges him with embezzling from an entity different from the one which actually received federal funds, i.e., the County itself. The defendant claims that the statute requires that the embezzlement must have been from the same entity that received the federal funds. The statutory language and the legislative history do not support the defendant's contentions. Section 666(b), which sets forth the jurisdictional requirements, provides only that "the organization, government or agency" must receive the federal money, $10,000 per year, and § 666(a)(1)(A)(i) requires that the embezzlement must be in the amount of $5,000 or more. There is not, however, a requirement that the embezzlement be of traceable federal funds. See *United States v. Pretty*, 98 F.3d 1213, 1219 (10th Cir. 1996). The legislative history provides that the intent of the Congress was to apply this statute broadly to embezzlement, theft, bribery, etc. from entities which receive federal funds.

> The Committee intends that the term "Federal program involving a grant, a contract, a subsidy, a loan, a guarantee, insurance, or another form of Federal assistance" be construed broadly, consistent with the purpose of this section to protect the integrity of the vast sums of money distributed through Federal programs from theft, fraud, and undue influence by bribery.

Sen. R. No. 98-225, Pub. L. No. 98-473, 1984 U.S.C.C.A.N (98 Stat.) 370.

Giving the statute the broad interpretation intended, the fact that Monroe County received the federal funds generally, rather

than the County Clerk's office individually, is irrelevant to the application of this statute. The governmental entity, the County, clearly includes the office of the County Clerk from which the funds were embezzled. In addition, defendant asserts that he neither administered, nor stole, federal funds directly. This is not required for the crime charged. The only requirement is that the defendant embezzled funds or property in excess of $5,000 from Monroe County. The indictment properly charged this crime, and the evidence supports the indictment.

B. *Federal Funds Threshold*

The defendant asserts that the evidence adduced at trial fails to support the finding that the county received the requisite amount of federal funds yearly to bring this action within the ambit of the statute. However, the Court finds that the government provided, proved and established beyond a reasonable doubt that the County received in excess of $10,000 per year for the years in question. Specifically, the government's evidence was, from the testimony of Merrill Prange, County Treasurer of Monroe County, and certain exhibits admitted into evidence, that Monroe County received benefits under various federal programs in each of the years 1991-1995.

The defendant has argued that because certain of those funds were disbursed to other governmental entities, e.g. Village of Fults, Fountain Water District, and Harrisonville Levee District, they should not be included in the totals of "benefits" received by Monroe County. Without deciding this issue, but giving the defendant the benefit of the doubt by reducing the amount received by Monroe County by the disbursement to other governmental entities, the Court finds that the government has established that Monroe County received benefits in excess of $10,000 in each of the years 1991-1995.

The Court further finds, beyond a reasonable doubt, that these funds were under the care, custody or control of Monroe County,

Illinois, and that Counts 12-16, therefore, satisfy the provisions of § 666.

The defendant also asserts that the government failed to prove that he embezzled or stole property valued at $5,000 or more as charged in Counts 12-16. The Court will more fully address the government's evidence in its Memorandum of Decision, and DENIES defendant's motion for judgment of acquittal on these grounds at this time.

The defendant further raises several arguments already addressed by the Court with respect to the charges in Counts 1-11, as arguments which are of little merit. Accordingly, the Court rejects the following arguments:

(1) That the checks written from the special account were for office purposes;

(2) That the government failed to prove that the defendant was not entitled to receive compensation from his collection of fees;

(3) That the government failed to prove that the defendant was not permitted to pay off-ice expenses from the fees;

(4) That there was no proof that the defendant lacked the authority to set up the special account, or that fees had to be deposited into any specific account;

(5) That there was no evidence that the defendant failed to properly account for copy fees; and

(6) That the government failed to prove that the defendant was not entitled to money from the special account.

Although the defendant raises these defenses, the Court finds that there was no evidence to support his argument or position that these embezzled funds in any manner represent funds to which the defendant was legally entitled, e.g. a salary, or reimbursement. Accordingly, the Court finds that 18 U.S.C. § 666,

which provides that the statute "does not apply to bona fide salary, wages, fees or other compensation paid, or expenses paid or reimbursed in the usual course of business," simply does not affect the charges in Counts 12-16 because there was no evidence that his use of these funds was in any manner bona fide or justified

In conclusion, the Court DENIES defendant's motion for judgment of acquittal on all grounds, pursuant to Fed. R. Crim. P. 29.

IT IS SO ORDERED.

DATED: 20 August 1997

/s/ William D. Stiehl
DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Cause No. 95-30135-WDS

UNITED STATES OF AMERICA,
Plaintiff,

v.

RICHARD A. TROST,
Defendant.

MEMORANDUM & ORDER

STIEHL, District Judge:

This matter is before the Court for ruling on Count 17 of the indictment which seeks forfeiture of certain assets pursuant to 18 U.S.C. § 982. On August 20, 1997, the defendant, having previously waived trial by jury and consented to trial by the Court pursuant to Fed. R. Crim. P. 23(a), was convicted of five counts of mail fraud (Counts 1-5), six counts of money laundering (Counts 6-11), and four counts of embezzlement (Counts 13-16). The Court acquitted the defendant of embezzlement as charged in Count 12.

On September 17, 1997, the Court took evidence on Count 17, and took the matter under advisement. The government has indicated that it no longer seeks the forfeiture of the personal property items set forth in Count 17, and now only seeks forfeiture of money in the amount of $92,424.93, and the defendant's residence at 3971 Ahne Road, Waterloo, Illinois. The forfeiture count, Count 17, realleges Counts 6-11, the money laundering counts, as the bases for forfeiture under § 982.

I. *FORFEITURE*

A. *Applicable statutes*:

The government has asserted that it seeks forfeiture both wider the civil forfeiture provisions of 18 U.S.C. § 981, and the criminal forfeiture provisions of 18 U.S.C. § 982. The civil forfeiture statute, at § 981(a)(1)(A) provides for the forfeiture of "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of... section 1956 ... or any property traceable to such property." Section 982(a)(1) provides: "The court, in imposing sentence on a person convicted of an offense in violation of... section 1956 ... of this title, *shall order* that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property." (Emphasis added). The Court specifically finds by a preponderance of the evidence that the defendant is guilty on Count 17, and subject to forfeiture pursuant to § 982.[1]

B. *The "Special Account" #020456*:

The government asserts that the evidence at trial established that a total of $114,424.93 was funneled through the defendant's special account. The defendant argues that the forfeiture should be limited to the amounts set forth in Counts 6-11, which the Court has determined to be $23,268. In its Memorandum of Decision, the Court specifically found, however, that the defendant's illegal conduct amounted to the following:

Count 1	$113
Count 2	132
Count 3	169

---

[1] Once a defendant is convicted, the burden of proof for criminal forfeiture is only a preponderance of the evidence. *United States v. Herrero*, 893 F.2d 1512, 1541 (7th Cir. 1990).

Count 4	386
Count 5	1,350
Count 6	5,000
Count 7	4,000
Count 8	5,000
Count 9	3,000
Count 10	5,027
Count 11	1,268
Count 13	6,807
Count 14	26,628
Count 15	16,108
Count 16	5,424

for a total of $80,412. However, in certain instances the same illegal dollars supported both the embezzlement and money laundering charges. These clearly should not be double counted for forfeiture purposes. Therefore, the total of $80,412 will be reduced as follows:

Count 13	$4,000	(Ex. #5)
Count 14	5,000	(Ex. #12) & 5,000 (Ex. #13)
Count 15	5,000	(Ex. #27) & 3,000 (Ex. #30)
Count 16	1,000	(Ex. #42)

for a total reduction in the amount of $23,000. The total amount of money involved which the Court finds to be forfeitable is, therefore, $57,412.

Here, because the defendant has been "convicted of violating 18 U.S.C. § 1956, the plain language of the forfeiture statute require[s] the district court to order the forfeiture of [the defendants] ill-gotten property." *United States v. Emerson*, 128 F.3d 557, 566 (7th Cir. 1997). Further, "[florfeiture ... seeks to punish a defendant for his ill gotten gains by transferring those gains from the defendant to the United States Department of Justice (D.O.J.)" *Id.* at 567.

The punishment, however, is not unlimited. The statute speaks of the forfeiture of property "involved in the offense." Therefore, the amount of the forfeiture must be related to the offense or offenses. In *United States v. $448,342.85*, 969 F.2d 474 (7th Cir. 1992), the court rejected the government's claim that the entire balance of an account was forfeitable just because "proceeds of a crime once passed through that account." Id. at 476. The court reasoned that the "'account' is a name, a routing device like the address of a building; the money is the 'property.'" *Id.* Further:

> Once we distinguish the money from its container, it also follows that the presence of one illegal dollar in an account does not taint the rest—as if the dollar obtained from fraud were like a drop of ink falling into a glass of water. To the extent *United States v. Certain Funds on Deposit in Account No. 01-0-71417*, 769 F. Supp. 80, 84-85 (E.D. N.Y. 1991), and *United States v. All Monies ($477,048.62) in Account No. 90-3617-3*, 754 F. Supp. 1467, 1472-76 (D. Hawaii 1991), treat the account as the "property" for purposes of § 981, we disapprove their holdings.

Id. at 476-77. Here, unlike the posture of the account in *$448,3342.85*, the government is not seeking to forfeit the amount of money present in an account at the time of seizure, rather it is attempting to forfeit the amount of money which it established the defendant stole from the county and then laundered through Account #120456. Cf. 969 F.2d 474.

Defendant asserts that the Court's findings of August 20, 1997, on Counts 6-11, that defendant laundered a total of $23,268 of embezzled funds, limit the government to that amount in forfeiture. Defendant states that there is no cash in Account #120456, and therefore there is no balance to forfeit. Further, defendant asserts that because the Court determined that $22,000 of the laundered embezzled funds went into the family house, the government may only recover $22,000 from defendant's interest in the value of the house, and must seek the remainder from substitute assets.

The Court finds, however, that the amount subject to forfeiture is not limited to the amounts set forth in Counts 6-11, but rather is that amount of money defendant actually stole or embezzled, and laundered through Account #120456, as set forth in the Court's Memorandum of Decision. As the Seventh Circuit stated in *United States v. Moya-Gomez*, 860 F.2d 706, 721 (7th Cir. 1988), criminal forfeiture is "an in personam proceeding against a defendant in a criminal case and is imposed as a sanction against a defendant upon his conviction ...." Certainly, it is well within the ambit of the provisions of § 982 to punish the defendant by forfeiting the amount of money which constituted the offenses as found by the Court to have been proven.

The money laundering was part of an overall scheme, amounting to the total criminal offense in the amount of $57,412 as previously set forth. This. money was placed into Account #120456 as set forth in Government Exhibit #1351. Although addressing civil forfeiture under § 981, as the court noted in *$448,342.85*, "money need not be derived from crime to be 'involved' in it; perhaps a particular sum is used as the bankroll *facilitating* the fraud." 969 F.2d at 477 (emphasis added).

Here, the Court has found beyond a reasonable doubt in its Memorandum of Decision, that the defendant used Account #120456 to launder money he embezzled from Monroe County.

Defendant, through an inventive scheme, used the device of Special Account #120456 to launder the proceeds of specified unlawful activities, namely mail fraud and embezzlement. Thus, the account was used to facilitate the crimes of which defendant has been convicted, and to pay both the mortgage indebtedness on defendant's house and on his vehicles. The amounts detailed in the Court's findings establish that significantly more than $23,268 was funneled through this account to conceal or disguise the true nature, location, source, ownership or control of the unlawful activities of his scheme. *United States v. Gabel*, 85 F.3d 1217, 1224 (7th Cir. 1996). Furthermore, this Court specifically found that "there was no evidence that [the defendant's] use of [the embezzled] funds was in any manner *bona fide* or justified." (Memorandum & Order, Aug. 20,1997, p. 16).

Accordingly, the Court FINDS that the only credible evidence was that a great majority of the funds which defendant deposited into Account # 120456 were "involved" in the money laundering, the overall scheme was in excess of $100,000, that Account # 12045 6 was used by the defendant to facilitate the scheme, and that the defendant is subject to forfeiture of his assets in the amount of $57,412.

C. *Reduction in Amount*

Defendant asserts that of the total amount sought by the government some $20,361.16, was deposited into Account #120456 prior to the applicable statute of limitations and prior to the time of the charge. The Court, on the first day of the bench trial, denied defendant's motion in limine on the admissibility of evidence that predated the period of the indictment. The Court ruled that the evidence was admissible as to the overall scheme.

In light of the Court's specific determination of the total amount subject to forfeiture, this argument of the defendant is rendered moot, because the Court has not included the $20,361.16 deposited into this account before the time of the indictment. The

amount may, however, be considered by the Court as part of its determination of the value of the laundered funds.

D. *Forfeiture of the Property at 3971 Ahne Road, Waterloo. Illinois*

In addition to the amount of funds laundered through Account #120456, the government seeks forfeiture of defendant's residence at 3971 Ahne Road, Waterloo, Illinois. The evidence clearly established, and the Court specifically found, that the defendant used a portion of the proceeds of specified unlawful activities when he used laundered, embezzled funds to pay $22,000 on his home mortgage. Defendant raises the same argument with respect to the forfeiture of the residence as he raised to the forfeiture of proceeds of the money laundered, i.e. that the government should be limited to a total forfeiture of the amounts established in Counts 6-11, which the Court found to be $23,268.

Under § 982, the "property" involved in the illegal activity, and therefore subject to forfeiture, is property "Involved in the offense." The Court specifically found that with respect to each of the mortgage payments charged in Counts 6-11, defendant did not, without use of the laundered funds, have sufficient funds in his personal checking account to make the payments. There was, therefore, a substantial connection between the money laundering and the residence, for, without proceeds from the unlawful activity to cover the mortgage, it is likely the property would have been subject to foreclosure.

Although it is clear that the defendant used proceeds from his criminal activities to make payments on the residence, the Court cannot find that the entire residence is subject to forfeiture. Therefore, the Court declines to order the forfeiture of the property as a whole, and finds that the residence is forfeitable to the amount of payments made, or $22,000. See *United States v. One 1980 Rolls Royce*, 905 F.2d 89, 90 (5th Cir. 1990); *United*

States v. Pole No. 3172 Hopkinton, 852 F.2d 636 (1st Cir. 1988). In the event that the government is able to recover any or all of the $22,000 from the forfeiture of the residence, that amount recovered will further reduce the total forfeiture amount.

However, because this property is marital property, the exact amount which can be recovered from the property can only be determined after the Court holds third-party proceedings, in accordance with the applicable statutes.

II. *SUBSTITUTE ASSETS*

Section 982(b)(1)(A) provides that criminal forfeiture of property under subsection (a)(1) is governed by the provisions of 21 U.S.C. § 853(c), (e)-(p). Subsection (p) provides for forfeiture of substitute assets when the property directly involved has been transferred, sold to or deposited with a third party.

The Court FINDS that the issue of the forfeiture of substitute assets must be determined after the Court determines the rights of any third parties in the forfeited residence.

CONCLUSION

Accordingly, the Court hereby FINDS the defendant GUILTY by a preponderance of the evidence on Count 17; FINDS the defendant's assets to be forfeitable in the total amount of $57,412; and FINDS the defendant's residence at 3971 Ahne Road, Waterloo, Illinois, to be forfeitable up to the amount of $22,000, as more fully set forth herein.

IT IS SO ORDERED.

DATED: 18 December 1997

/s/ William D. Stiehl
DISTRICT JUDGE

AO 245B (Rev. 8/96) Sheet 1 - Judgment in a Criminal Case

FILED

DEC 18 1997

CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLIN.
EAST ST. LOUIS

United States District Court

Southern District of Illinois at East St. Louis

UNITED STATES OF AMERICA
v.
RICHARD A. TROST

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 3:95CR30135-001

Floyd Crowder/Frederick J. Hess
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☒ was found guilty on count(s) 1,2,3,4,5,6,7,8,9,10,11,13,14,15, 16 and 17 after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 1341	Mail Fraud	06/01/1995	1-5
18 U.S.C. § 1956	Money Laundering	01/19/1994	6-11
18 U.S.C. § 666	Embezzlement	12/31/1994	13-16

See Additional Counts of Conviction - Page 2

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has been found not guilty on count(s) 12 of the Indictment

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 360-32-6980
Defendant's Date of Birth: 12/17/1938
Defendant's USM No.: 03610-025
Defendant's Residence Address:
3971 Ahne Road
Waterloo IL 62298
Defendant's Mailing Address:
3971 Ahne Road
Waterloo IL 62298

12/18/1997
Date of Imposition of Judgment

William D. Stichl
Signature of Judicial Officer

Honorable William D. Stichl
U. S. District Judge
Name & Title of Judicial Officer

18 December 1997
Date

DEFENDANT: RICHARD A. TROST

CASE NUMBER: 3:95CR30135-001

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 982	Forfeiture Count	06/01/1995	17

DEFENDANT: RICHARD A. TROST

CASE NUMBER: 3:95CR30135-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 50 month(s).

This term consists of 50 months on each of Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, and 16, to be served concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:

FPC Greenville, Illinois

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at _____ a.m./p.m. on _____.
- ☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on _____.
- ☒ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____

UNITED STATES MARSHAL

A-75 By _____

DEFENDANT: RICHARD A. TROST

CASE NUMBER: 3:95CR30135-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 year(s).

This term consists of 3 years on each of Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15 and 16, said terms to run concurrently.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☒ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

See Special Conditions of Supervision - Page 5

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: RICHARD A. TROST

CASE NUMBER: 3:95CR30135-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall provide the probation officer with access to any requested financial information.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment payment schedule.

DEFENDANT: RICHARD A. TROST

CASE NUMBER: 3:95CR30135-001

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	$ 750.00	$	$ 100,123.71

☐ If applicable, restitution amount ordered pursuant to plea agreement . . . . . $ _____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $ _____.

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such a determination.

☒ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Name of Payee	* Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
Monroe County Treasurer and Collector		$100,123.71	
Totals:	$ _____	$ 100,123.71	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☒ in full immediately; or

B ☐ $ _____ immediately, balance due (in accordance with C, D, or E); or

C ☐ not later than _____; or

D ☐ in installments to commence _____ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E ☐ in _____ *(e.g. equal, weekly, monthly, quarterly)* installments of $ _____ over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

If not paid immediately, same shall be paid in installment payments equaling 1/2 of defendant's monthly prison wages over and above the first $25. If not paid in full by the time of release, same shall be paid from earnings made by the defendant while on supervised release at the rate of $500 per month, or 10% of his gross earnings, whichever is greater.

☐ The defendant shall pay the cost of prosecution.

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

Defendant's assets to be forfeitable in the total amount of $57,412 and defendant's residence at 3971 Ahne Road, Waterloo, IL to be forfeited up to $22,000. See Memorandum & Order entered 12/18/97

Unless the Court has expressly ordered otherwise in the special instruction above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the Clerk, United States Courts, P. O. Box 249, 750 Missouri Avenue, East St. Louis, Illinois 62202, except those payments made through the Bureau of Prisons' Inmate Financial

BEST AVAILABLE COPY

AO 245B (Rev. 8/96) Sheet 6 - Statement of Reasons

DEFENDANT: RICHARD A. TROST

CASE NUMBER: 3:95CR30135-001

STATEMENT OF REASONS

☒ The court adopts the factual findings and guideline application in the presentence report.

OR

☐ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 22

Criminal History Category: I

Imprisonment Range: 41 to 51 months

Supervised Release Range: 2-3 years

Fine Range: $ 7,500.00 to $ 3,000,000.00

☒ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ 100,123.71

☐ Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

☐ For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the forseeable future under any reasonable schedule of payments.

☐ Partial restitution is ordered for the following reason(s):

☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

☐ The sentence departs from the guideline range:

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following specific reason(s):